

1 IN THE UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF TEXAS

3 EL PASO DIVISION

4 VOLUME 18 OF 20

5  
6 UNITED STATES OF AMERICA

EP:13-CR-0370-DCG

7 v.

EL PASO, TEXAS

8 MARCO ANTONIO DELGADO

September 29, 2017

9 **SENTENCING**

10 **RESTITUTION HEARING**

11 THE HONORABLE DAVID C. GUADERRAMA

12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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27 transcript produced by computer-aided software and computer.

KATHLEEN A. SUPNET, CSR

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1 (Open court.)

2 (Defendant present.)

3 THE COURT: Good morning, everyone. All right. We  
4 are here for some evidentiary hearings, sentencing and some  
5 restitution hearings.

6 I would ask for announcement of counsel please.

7 MS. KANOF: Debra Kanof and Anna Arreola for the  
8 United States.

9 We also have in the courtroom, Your Honor, two other  
10 counsel; Matthew Herrington from Steptoe Johnson in Washington  
11 D.C. representing the victims Mitsubishi, and Mark Maney from  
12 Maney and Gonzalez-Felix of Houston, Texas, representing the  
13 victim Comisión Federal de Electricidad de Mexico. Both may  
14 want to make statements for restitution under the victim  
15 statute that permits them to do so on behalf of their clients.  
16 And we are ready for sentencing and for the restitution hearing  
17 or the forfeiture hearing.

18 THE COURT: All right.

19 MR. HANSHEW: Good morning, Judge. Erik Hanshaw and  
20 Maureen Franco on behalf of Mr. Delgado.

21 THE COURT: And good morning to all of you.

22 PROBATION OFFICER LUEVANO: Good morning, Your Honor.  
23 Luis Luevano on behalf of the United States probation office.

24 THE COURT: Good morning, Mr. Luevano.

25 All right. We are here to accomplish a number of

1 things. In the evidentiary hearings, we're going to talk about  
2 the forfeitability of the items in that the government's notice  
3 of the forfeiture. And we'll also settle the objections that  
4 were made by the defendant to the PSR and his request for an  
5 evidentiary hearing there as well.

6 So my plan is to do this: First, we will take up the  
7 evidentiary hearings as to forfeitability and the objections to  
8 the PSR. Once we complete that phase, we will have a  
9 sentencing phase. Once we finish the sentencing phase, then we  
10 will proceed with a restitution phase. So...

11 MR. HANSHEW: Your Honor, if I may briefly? We have  
12 another issue that we need to raise with the Court.

13 Approach the podium?

14 THE COURT: Okay. Sure.

15 MR. HANSHEW: Thank you, Judge.

16 Last week, Judge, our office, the Federal Public  
17 Defender, received correspondence from an individual in Mexico  
18 who is apparently a Mexican attorney. The correspondence we  
19 received included an attachment, which was a letter indicating  
20 various documents and/or evidence that this attorney was  
21 working to obtain in Mexico.

22 The letter indicated that, in essence, through some  
23 procedure akin to what we call Freedom of Information Act here  
24 in the United States, this attorney was working to obtain these  
25 documents. The documents that were described in this

1 correspondence included video of the signing of the contracts  
2 that were an issue in this case, and purportedly in this video  
3 showed that various of the witnesses that you heard at the  
4 trial in this case were there and participated in this process,  
5 correspondence to and/or from, C.F.E., and/or Mitsubishi  
6 officials indicating their acquiescence to, for example, the  
7 letters of credit and such.

8 And so this correspondence we spoke with our client  
9 about this correspondence and you know what he wanted us to do  
10 as a result of it.

11 It was framed in the letter to us that there needed to  
12 be a continuance of the hearings that the Court just mentioned,  
13 so that they could obtain these documents so that we'd be able  
14 to provide them here for the Court at a hearing evidentiary or  
15 otherwise, Judge. So we're in a situation where we have to ask  
16 the Court, based on that information and our client's wishes,  
17 for a continuance so that we can allow this Mexican attorney to  
18 complete the process there. The information received was that  
19 the process takes either 90 or 120 days; 90, if the request  
20 remained uncontested; 120 days, if there is some type of  
21 objections or someone or entity contesting that process.  
22 Information received is that this process didn't start going  
23 until mid September and that there was a bit of a time  
24 disruption because of the earthquake in Mexico.

25 So based on all of that, Judge, we are asking the

1 Court to continue these hearings so that we can obtain  
2 information.

3 We've asked and we haven't received -- my office has  
4 asked, in response to correspondence, for some type of at least  
5 preliminary document, so that we can show the Court, for  
6 example, the Freedom of Information request and we haven't  
7 received that to date. So that's -- that is our request,  
8 Judge.

9 THE COURT: All right. Thank you, Mr. Hanshew.  
10 Ms. Kanof?

11 MS. KANOF: Your Honor, I received a phone call from  
12 Jose Luis Gonzalez.

13 Do you want me to go to the podium?

14 THE COURT: Only if you want to.

15 MR. KANOF: Only if the court reporter wants me to.

16 I received a phone call at 4:27 p.m. yesterday  
17 afternoon from the El Paso chief and deputy criminal chief of  
18 the district, Jose Luis Gonzalez, that I needed to call  
19 Ms. Franco about this, so we first learned about this yesterday  
20 afternoon before closing.

21 And I know very little other than they received an  
22 e-mail last Monday. I don't know whether this is really a  
23 lawyer. I don't know whether this is really a peruse. I don't  
24 know whether this e-mail really came from Mexico. Another is,  
25 I don't know of anything about this. And for the Court to once

1 again continue the sentencing of the defendant on such nebulous  
2 information I think is inappropriate. We have victims' counsel  
3 here, who have many times made reservations, spent money, lost  
4 money.

5 Mr. Maney took six hours going from his home in  
6 Houston to the airport in San Antonio, his home -- his backyard  
7 being full of snakes, armadillos and alligators during the  
8 hurricane only to be stopped from flying to El Paso in the last  
9 continuance. It's a lot of inconvenience and a lot of expense  
10 on the part of the victims.

11 There are other remedies that are available after  
12 sentencing; motions for reconsideration, motion for new trial  
13 based on new evidence that can occur once we find out that this  
14 is actually valid and not perhaps a fictitious e-mail that  
15 could've been generated by the defendant himself or friends of  
16 the defendant. So the government would object to once again  
17 allowing additional time for a process that's already taken a  
18 year.

19 THE COURT: Okay.

20 MR. HANSHEW: Your Honor, if I may briefly.

21 THE COURT: Sure.

22 MR. HANSHEW: I'll show the government these documents  
23 before I...

24 MS. KANOF: Okay. The record shows that Mr. Hanshaw  
25 has provided me with documents that seem to certify that this

1 individual named Juan Manuel Valdez Rodriguez is a lawyer.  
2 Although yesterday, when I asked them the name of the  
3 individual, they told me it was Villanueva, and I don't see any  
4 documents -- oh, Jose Ruiz Villanueva doesn't seem to match the  
5 e-mail or I don't know what this is. What is this?

6 THE COURT: Well, why don't you mark those and make  
7 them an exhibit for the record. I'm going to deny the motion  
8 for continuance so we can get going. We've got a long day.

9 All right. So, the government filed an indictment on  
10 January 22nd of 2014, it seems like, where they gave notice of  
11 the forfeiture. We got the trial. At that point, somewhere on  
12 the record, I had asked my court reporter to look this up. She  
13 found where Mrs. Arreola had agreed with Mr. Hanshew that the  
14 issue of forfeitability would not be submitted to the jury that  
15 was going to determine guilty or innocence on the charges, so  
16 the issue of the jury was waived. There was no request for a  
17 hearing and no indication that forfeiture would be contested at  
18 that point. And now this is September 21, 2016, a year and a  
19 half after the notice of the forfeiture.

20 On July 14th of 2017, the defendant submitted  
21 objections to the PSR. And in objection four, the defendant  
22 indicated that as to PSR paragraph 2, which included all of the  
23 properties the government is wanting to forfeit, included a  
24 Jeep, and the defendant indicated that the Jeep was not  
25 purchased with proceeds from the offense and was opposed to the



1 Jeep forfeiture. There was no request for an evidentiary  
2 hearing attached to that objection.

3 However, in the rest of the objections, defendant  
4 submitted objection number one to the PSR regarding the loss  
5 valuation and requested an evidentiary hearing. Defendant  
6 submitted objection number two to the PSR regarding restitution  
7 and requested an evidentiary hearing. So, it would have seemed  
8 from the defendant's objections that they were not contesting  
9 anything but the Jeep.

10 And obviously the Court is allowed to consider, in  
11 terms of forfeiture, everything heard at trial, and pursuant to  
12 Federal Rule of Criminal Procedure 32.2(b)(1)(B), the Court can  
13 determine the issue on any additional evidence or information  
14 surround submitted bit parties. This objection is one of those  
15 things. But there was no request for a hearing.

16 The government then files its motion for preliminary  
17 order of forfeiture. I did sign that. Over a month later, the  
18 defendant indicates that they are contesting the forfeiture and  
19 would like a hearing.

20 And so I guess my first question is, are you  
21 contesting the forfeiture on all of the assets or just the  
22 Jeep, because I don't think the Jeep was included in the order.  
23 For some reason none of the vehicles were in the order. Where  
24 are the vehicles or what's going on with the vehicles?

25 MS. ARREOLA: Your Honor, the government, I believe we

1 dropped a footnote in the motion for preliminary order  
2 forfeiture that the vehicles were administratively forfeited.

3 THE COURT: Okay. So now the Jeep is not part of  
4 that. Are you standing on your objection that you don't have  
5 any objections to the others or are you --

6 MR. HANSHEW: And Judge, to be clear, I think you  
7 skipped part of the time line here, which was we filed our PSR  
8 objections, and timely, on July 14th. But at that point the  
9 government hadn't filed its motion for forfeiture.

10 THE COURT: Right.

11 MR. HANSHEW: In fact, they didn't file that until I  
12 think six days later, July 20th.

13 THE COURT: Right, I agree.

14 MR. HANSHEW: And then the Court, in less than  
15 one day --

16 THE COURT: No. Actually four days. It was four days  
17 later. They filed their motion on the 20th. The order was  
18 issued on -- or at least it was filed --

19 MR. HANSHEW: It had a date stamp on it of July 21st.

20 THE COURT: The record I looked at said it was filed  
21 on the 4th.

22 MR. HANSHEW: I mean, as I put it in our motion,  
23 whether it's one day or four days, it's obviously shorter than  
24 the time to respond.

25 THE COURT: And we're like three years later.

1 Certainly, somebody might say the defendant was a little  
2 dilatory in indicating that they were contesting the forfeiture  
3 and they wanted a hearing. That's beside the point. Because  
4 the preliminary order of forfeiture is a draft until sentencing  
5 when its finalized.

6 MR. HANSHEW: Okay. I just wanted to show the Court  
7 when --

8 THE COURT: No. I don't have any problem giving you a  
9 hearing, but your motion was a little harsh and I wanted to  
10 respond. You clearly could've asked for hearing in your  
11 objection and you did not, and the only thing you objected to  
12 was a Jeep, which would lead me to believe that you were not  
13 contesting the forfeiture as to the rest of those items.

14 MR. HANSHEW: But the government hadn't filed the  
15 motion for forfeiture.

16 THE COURT: They filed their indication they -- the  
17 notice of forfeiture with their indictment three years ahead of  
18 time.

19 MR. HANSHEW: Right. But the notice is not --

20 THE COURT: Fine. Well, we can debate I guess from  
21 now until forever, but you're going to get your hearing. So...

22 MR. HANSHEW: Yes, Judge, but I have to make a record  
23 here.

24 So it would be clear for the record, I want to make  
25 sure the Court is not in somehow interpreting this that we

1 waived our right to object because of any of the time line in  
2 this case. We believe it's timely in accordance with the law  
3 that when they filed their motion, we then filed our opposition  
4 to that.

5 And frankly, if you read the statutes on this, Judge,  
6 the Court and the government should have been taking care of  
7 the motion for forfeiture soon after the trial. So, you know,  
8 I mean in terms of dilatoriness, that falls on the I think the  
9 Court and government as well, and so, you know, I don't think  
10 Mr. Delgado and/or his defense in this case that anything that  
11 was out of order in terms of the time to respond to this  
12 information.

13 THE COURT: And I understand that's your opinion and  
14 you're entitled to it. So here we go. Here we are on the  
15 motion now.

16 Ms. Arreola, what is your evidence in terms of motion  
17 for forfeiture of all of the items except the vehicles?

18 MS. ARREOLA: Your Honor, as the Court recommended  
19 under Federal Rule of Criminal Procedure 32 point (b)(1)(B)  
20 [sic], the Court's determination may be based on evidence that  
21 is already in the record. And the government rests based upon  
22 the evidence that was introduced.

23 The government would respectfully cite for the Court  
24 the case of *United States v. Capoccia*, 503 F.3d 103, which is a  
25 Second Circuit case in 2007, where the Court wrote that the

1 appellant in that case, his interpretation of the rule would  
2 have led to the absurd result that whenever a defendant  
3 contests the amount of forfeiture, the government will be  
4 required to reintroduce at a post trial hearing potentially  
5 large portions of its case from the guilt phase of defendant's  
6 trial to a judge or jury that has already seen and considered  
7 the relevant evidence. The Rule's drafters could not have  
8 intended such an unnecessary and burdensome outcome.

9           The government does not believe it needs to  
10 reintroduce any of the evidence. And the government has  
11 already cited in its motion for preliminary order of  
12 forfeiture, the specific exhibits and testimony that support  
13 forfeiture. All of the assets that were included in the  
14 government's proposed order were directly traceable out of the  
15 Turks and Caicos' account and therefore are directly proceeds  
16 of the offense.

17           If Your Honor wants me to address the other arguments  
18 that were raised in the government's -- excuse me -- in  
19 defendant's opposition of the forfeiture at the time?

20           THE COURT: Which arguments from those?

21           MS. ARREOLA: There was an argument regarding the  
22 conditions of probation. They were -- the government relied on  
23 the summary --

24           THE COURT: The money forfeiture? Uh-huh.

25           MS. ARREOLA: -- in 2011. I contacted the probation

1 office and I was advised that the probation office had  
2 issued -- that there are now new conditions of probation of  
3 supervised release that were filed on November 28th, 2016.  
4 They're not available as far as I could tell on the probation's  
5 website, but the government did, as defense counsel pointed  
6 out, cite in its proposed order the incorrect numbering for  
7 three of those conditions. As far as I can tell, the language  
8 of the conditions is the same. They've just been -- the  
9 numbers have been changed. So 20, 21 and 22 are now 14, 15 and  
10 16. It's a de minimus error, Your Honor. If the Court wants  
11 the government to resubmit an amended proposed order of money  
12 judgment, the government is happy to do so, but otherwise the  
13 government's position it's de minimis. If it could be the case  
14 that the Court issues the order and the conditions change again  
15 in another couple of years that won't invalidate the order.

16 THE COURT: All right.

17 Mr. Hanshew?

18 MR. HANSHEW: Thank you, Judge.

19 We would respond in kind that the evidence that was  
20 put in at trial would also show the lack of nexus in terms of  
21 the property and the forfeiture in this case.

22 Introduced, among other things in the trial, was the  
23 memorandum of understanding as well as special power of  
24 attorney as well as settlement agreement. And when you look at  
25 those documents collectively and/or even individually, it

1 demonstrates that Mr. Delgado was operating within powers that  
2 were enumerated and provided in this case.

3 And additionally we would reiterate our objection to  
4 the Court's denial of the motion for a continuance, because  
5 those materials that would be forthcoming would also relate to  
6 this and we don't have those at this time, Judge.

7 THE COURT: All right.

8 MR. HANSHEW: And lastly, Judge, and just for purposes  
9 of record-keeping, we incorporate by reference all of the  
10 objections we put in our written pleading on this forfeiture  
11 issue.

12 And additionally, I just wanted to highlight to the  
13 extent that the Court failed to make the required determination  
14 in terms of whether the jury would consider this issue, we  
15 again reiterate that objection, Judge.

16 THE COURT: All right.

17 And so Ms. Supnet, do you have the record?

18 I think that was placed in the record that you waived  
19 presenting the issue to the jury.

20 MR. HANSHEW: And I didn't have the record, Judge, so  
21 that's why I put that there in abundance of caution.

22 THE COURT: Can you show him that, Ms. Arreola?

23 MS. ARREOLA: Yes, Your Honor. I'll provide him a  
24 copy of the transcript.

25 And the government does not dispute that he did not

1 waive the right to forfeiture hearing in front of the Judge,  
2 but simply waived his right to have it tried before a jury.  
3 And I'll provide a copy to defense counsel.

4 THE COURT: So did you have any other evidence or  
5 purposes of the hearing?

6 MR. HANSHEW: Those documents that I mentioned, Judge,  
7 as part of the record already.

8 THE COURT: They are part of the record and they are  
9 before the Court. I will find by preponderance of the evidence  
10 that the government has established a nexus between the  
11 offenses and the assets that they seek forfeiture of and that  
12 those assets are in fact forfeitable. Your request that I  
13 vacate the preliminary order is denied.

14 And I don't know, Ms. Arreola, maybe we can amend the  
15 money judgment to reflect what it needs to reflect at this time  
16 and that way we won't have that issue pending with us.

17 MS. ARREOLA: Yes, Your Honor, the government will  
18 submit one today and copy defense counsel.

19 THE COURT: Okay.

20 So, there were some additional issues. And I guess  
21 I'm thinking that those evidentiary hearings that you're  
22 requesting go to the restitution and so to Mitsubishi what  
23 their loss really was.

24 MR. HANSHEW: Yes, we request --

25 THE COURT: And also in relation to the loss amount



1 that we're going to use for additional levels to the  
2 sentencing.

3 MR. HANSHEW: Correct, Judge. We did ask for  
4 evidentiary hearing on both of those matters, because it's the  
5 government's burden.

6 THE COURT: All right.

7 So let's start off with the issue of the lost amount.  
8 And if you can -- my calculation is that it's not above 25,000.  
9 I believe its below 25. And so the appropriate guideline would  
10 be two levels lower, but if the government wants to put on  
11 evidence to show otherwise, I'm happy to hear that.

12 Did you have a calculation, Mr. Hanshew, or you're  
13 just -- do you think zero is appropriate?

14 MR. HANSHEW: I believe zero is appropriate. And I  
15 think the Seventh Circuit in the case I cited hit the nail on  
16 the head, which is that just simply because the government goes  
17 to a jury and proves up a fraud, doesn't mean that they've  
18 proved up a loss. And in fact, they even used the language  
19 that, you know, that's the bonus points that they get if they  
20 come here and show in court this loss.

21 And so I think that's very important to remember here,  
22 because you heard, and the government has read in their brief,  
23 that, you know, somehow we're saying to undue the jury verdict.  
24 Well, the courts have made clear that is not at what's at issue  
25 here when you are disputing loss. It is they have that extra

1       burden to show that and we don't believe they've showed any  
2       loss by what is there, Jude.

3               THE COURT: All right.

4               Ms. Arreola or Ms. Kanof?

5               MS. KANOF: Your Honor, I think the Court said 25,000.  
6       I think the Court meant 25-million.

7               THE COURT: 25-million. Sorry. I never deal in  
8       millions of dollars, and so that's an unusual number.

9               MS. KANOF: I'm there with you, Judge. I've always  
10      been a government employee.

11              And if you're referring -- first of all, we rely on  
12      calculations of the probation department, because we think they  
13      got it right, but first of all, it's loss or intended loss, and  
14      there's definitely intended loss that was proven up by the  
15      evidence before the jury. And with regard to if you look at  
16      there's definitely an indication, both by the victims'  
17      impact presentation on the part of Mitsubishi as well as the  
18      conclusions that were made from the figures that were provided  
19      by the agent of 24-million-plus. So I won't disagree with the  
20      Court that it was under 25-million, but it was certainly just  
21      slightly under 25-million.

22              THE COURT: Right. The guidelines being the  
23      guidelines, that's a two-level reduction. That would be a base  
24      offense level 29, because we would be adding 20 levels for  
25      below 25-million.

1           And I think there's -- the guidelines tell us that if  
2     the loss is difficult to figure out, we take the amount -- I  
3     think there's one where it says you take the amount that the --  
4     by which the defendant benefited, which was about 10-million,  
5     because he takes the 32-million. That's the number probation  
6     used, the 32-million that C.F.E. paid for their first payment  
7     on the equipment that was then diverted to Turks and Caicos.  
8     But I don't think -- it doesn't make sense to me that Mr.  
9     Delgado intended to take all of the 32-million, because then  
10    the jig would be up immediately.

11           It seems like this scheme was, give C.F.E. everything  
12    they bargained for, get the money from C.F.E., and then have  
13    F.G.G. and Mitsubishi think that because of the things that go  
14    on in Mexico, it wasn't really going to be 120-million after  
15    all. It's only going to be 110 and then he gets to keep 10.  
16    And everybody else just has to be satisfied with a slight  
17    reduction in what they were going to get. I think that was the  
18    scheme. I don't think the scheme was to take 32-million and  
19    run.

20           And so I know the report indicates that at this point  
21    Mr. Delgado realized that people were getting wise to what may  
22    have been going on and started disbursing money to appease  
23    them. I understand that. But still in all, it seems to me  
24    like it doesn't make sense that the scheme would be to take the  
25    32-million. And the scheme would be to fool everybody as to

1       how much was actually being paid and that's how he made his  
2       profit or would have made his profit. That would be below  
3       25-million. And if we take the loss to Mitsubishi, that would  
4       also be below the 25-million. So...

5               MS. KANOF: Your Honor, the Court isn't saying that  
6       we're just limiting it to the \$10-million that he obtained  
7       because there's more loss. I mean, the value of the power  
8       generator deteriorated over time, because they didn't get  
9       shipped. And then, you know, there's --

10              MR. HANSHEW: You Honor, I object. I mean, if she  
11       wants to put evidence on, this is --

12              THE COURT: No, no. This is her argument. I  
13       understand. I understand I haven't heard it and this is new to  
14       me, too.

15              MR. HANSHEW: Thank you.

16              MS. KANOF: But I understand that -- I agree with the  
17       Court that it's under 25-million, but I would limit it to the  
18       10-million, although it doesn't make any sense because of the  
19       range.

20              THE COURT: No, no. I'm not doing that. And I'll  
21       give Mitsubishi an opportunity to put on whatever evidence it  
22       wants.

23              Were there other objections that you had that we need  
24       to have evidence on?

25              MR. HANSHEW: If I could just, briefly, on this topic,

1 Judge, you know, on record keeping here, Judge, is to ask the  
2 Court what its conclusion is to the actual loss. Because I  
3 know if we get to the Court of appeals, and we haven't objected  
4 and asked for a ruling from the Court, they're going to say we  
5 waived some component of argument. So we ask the Court to make  
6 a finding as to what that loss is, so that in turn, I can make  
7 the appropriate objection to that finding.

8 THE COURT: Yeah. If you want like an exact number,  
9 I'll have to wait and see after we have the restitution  
10 hearing, because it's not entirely clear to me exactly what  
11 that would be exactly.

12 MR. HANSHEW: Okay.

13 THE COURT: So for purposes of calculating the  
14 guidelines, I'm going to find that there was a loss, clearly  
15 that they can support that there was at least 10-million, so  
16 that would be -- we would add 20 levels for that. And I don't  
17 think it would be 25-million, so we wouldn't add the 22 levels.

18 So we would have a base of 7, 20 for the loss, the  
19 additional loss, 2 for the sophisticated scheme, that puts us  
20 at 29. And -- I'm sorry -- 29, and 2 for the sophisticated  
21 scheme puts us as 31 and 2 -- Category II is 121 to 151 months  
22 suggested guideline range.

23 MR. HANSHEW: Okay. Judge, so that I -- oh, I'm  
24 sorry.

25 THE COURT: But I can, after we have the restitution

1 hearing, then I have a better idea of what exactly, because now  
2 Ms. Kanof is talking about deterioration of the turbines  
3 because of the time. I don't know exactly how much time that  
4 was or why they would deteriorate if we're assuming they were  
5 still in Mitsubishi's possession. They were the experts of the  
6 machines and so --

7 MR. HANSHEW: If I can just -- I'll preserve and/or  
8 make an objection now.

9 THE COURT: Yeah.

10 MR. HANSHEW: We ask for a finding and when that  
11 finding is made, I'll make appropriate objections at that time.

12 And then just for -- to be sure, because I didn't go  
13 through reiterating all of my written objections, but I want to  
14 make sure the Court reviewed those and I incorporated those  
15 into my argument.

16 THE COURT: I did. And when we get to sentencing,  
17 we'll go through each objection one by one. We'll address each  
18 of the objections one by one.

19 MR. HANSHEW: Okay. Thank you, Judge.

20 THE COURT: All right.

21 So, then, Mr. Delgado, we come now to the sentencing  
22 part of the sentencing phase. And it is my duty to consider in  
23 sentencing your individual history and characteristics and the  
24 nature and circumstances of this case as well as other factors  
25 set out forth the Court in the sentencing statute.

1 I will also consider probation's presentence  
2 investigation report, all of the information that's included in  
3 that report, and all of the information that will be directed  
4 to the Court by yourself or by your counsel.

5 And once I have considered all of these matters then  
6 it's my intention to assess a sentence which is sufficient, but  
7 not greater than required, in order to accomplish the goals of  
8 the sentencing statute. Once I have imposed your sentence, you  
9 will then have the right to appeal that sentence to -- and your  
10 conviction as well, because this was a trial -- to the Fifth  
11 Circuit Court of Appeals.

12 If you wish to appeal your sentence, you must file a  
13 notice of appeal with the clerk of this court, indicating your  
14 desire to appeal your sentence to the Fifth Circuit Court of  
15 Appeals.

16 You must file that notice of appeal within 14 days of  
17 the date of the entry of judgment in your case. The date of  
18 the entry of judgment could be as early as today. I doubt that  
19 it would be, but it could be as early as today, so you need to  
20 be diligent about pursuing your notice of appeal.

21 If you don't have the money with which to appeal, you  
22 can petition the Court within this same 14-day period to appeal  
23 at no charge to you. And if you'd like, you can could request  
24 that Mr. Dueñas, my courtroom deputy who's seated right here,  
25 file the notice of appeal for you. He'll be happy to do that

1 for you today. Otherwise, I refer you to your counsel. They  
2 will be able to counsel you further on those appellate rights  
3 and help you perfect your appeal if you do wish to appeal.

4 Everything that I've just explained to you orally, I  
5 believe we provided you with a written document containing  
6 that. That document was in both English and Spanish.

7 All right. Mr. Delgado, why don't you and Mr. Hanshew  
8 come on up to the lectern. We'll cover these things quickly  
9 and then we will get back to your seats once we start going  
10 through the objections.

11 (Defendant and counsel present at the lectern.)

12 THE COURT: All right. You are Marco Antonio Delgado,  
13 the defendant in this case?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Mr. Delgado, you were found  
16 guilty by a jury on September 21st of 2016 of Counts One  
17 through Three of your indictment that charged wire fraud, Four  
18 through Ten of your indictment that charged laundering of  
19 monetary instruments, then Counts 11 through 19, which charged  
20 engaging in monetary transactions in property that was derived  
21 from a specified unlawful activity. So, the jury having found  
22 you guilty of that, I judge you guilty of that.

23 Now, prior to this morning's proceeding, did you have  
24 an opportunity to review and discuss with Mr. Hanshew and  
25 Ms. Franco the contents of Ms. Torres' presentence report?



1 THE DEFENDANT: I did, sir.

2 THE COURT: All right. In that report, she groups all  
3 of these counts together, applies the scoring of the highest  
4 count to the group, and that would have been the 4 through 19  
5 counts -- Count 4 through Count 19. She's scores your base  
6 offense level at 31, because they used the \$32-million payment  
7 that was paid by C.F.E. to your Turks and Caicos account.

8 I'm going to find that that should be base offense  
9 level 29. And we reach the base offense level 29, because this  
10 offense carries base level of 7. I add \$10-million for the --  
11 I'm sorry. I add 20 levels for the amount of the loss, which  
12 is in my view below 25-million, but more than 9,500,000 which  
13 is the lower end of it.

14 I agree that we would add two levels, because of the  
15 sophisticated nature of the offense. Perhaps, if that didn't  
16 apply, there would be two levels added, because a large part of  
17 it was from outside the United States or was done outside the  
18 United States.

19 That puts us at a total offense level of 29 -- I'm  
20 sorry -- 31. Those calculations are 29. Then we add the other  
21 2 for the sophisticated nature outside the United States.  
22 We're at 31, now. Cause you had a trial, there is no  
23 adjustment for acceptance. You do have a Criminal History  
24 Category of II. And so these two numbers, 31 and II, suggest,  
25 but do not demand the guideline imprisonment range of

1 121 months to 151 months.

2 That could be followed by very large fines.

3 And did the fine level change because of the drop in  
4 the two levels from 33 to 31?

5 PROBATION OFFICER LUEVANO: Your Honor, for Counts One  
6 through Three, the fine should be 15,000 to 150,000. Counts  
7 Four through Ten is 15,000 to 64,000, and Counts Eleven through  
8 Nineteen is 15,000 to 150,000.

9 THE COURT: All right.

10 So you're subject to those fines.

11 And in addition, there is -- you're subject to a \$100  
12 special assessment on each count. So there's 19 counts, that  
13 would be \$1,900 in special assessments.

14 All right. Mr. Hanshaw, do you concur in that  
15 scoring?

16 MR. HANSHEW: Well, subject to my objections on the  
17 loss valuation as well as my objection to the sophisticated  
18 means, Judge.

19 THE COURT: All right. Okay. Any objections or  
20 corrections to the report?

21 MR. HANSHEW: We --

22 THE COURT: Let's start with corrections.

23 MR. HANSHEW: Okay.

24 Well, we had objected in paragraph of my objection --

25 THE COURT: Yeah, we'll cover all of your objections.

1 Do you have any corrections to it?

2 MR. HANSHEW: Like? I mean --

3 THE COURT: Like on paragraph 38. Let me see, I  
4 think -- it was page 38. Let me see.

5 On page 38, the second full paragraph says third  
6 line -- second lines begins: In this instance, F.G.G. and  
7 C.F.E. entered into a \$21-million contract. Is that a separate  
8 contract or is it the \$120-million contract?

9 MR. HANSHEW: One moment, Judge.

10 THE COURT: Sure.

11 It's page 38, the second paragraph, third line.

12 MR. HANSHEW: 121, Judge.

13 THE COURT: Is it 120?

14 MR. HANSHEW: That's what I got.

15 THE COURT: Yeah. So, Mr. Luevano, should that be  
16 \$120-million?

17 PROBATION OFFICER LUEVANO: It should be \$120-million.

18 MS. KANOF: 120-million.

19 THE COURT: All right. So we'll make that change.

20 Also, page 92 -- is there a page 92? Maybe it's  
21 paragraph 92.

22 This is paragraph 92 on page 36. It's less than the  
23 original contract. (Reading.)

24 MS. KANOF: That's also a mistake, Your Honor.

25 THE COURT: Is it?

1 MS. KANOF: Uh-huh.

2 THE COURT: So, in the third line from the bottom in  
3 paragraph of 92 where it says 102, Mr. Luevano?

4 Because we're talking about the contract with C.F.E.

5 MS. KANOF: The original contract price is incorrect.

6 THE COURT: Right. So it should be 120.

7 PROBATION OFFICER LUEVANO: That is correct, Your  
8 Honor.

9 THE COURT: Mr. Hanshew?

10 MR. HANSHEW: Correct, Judge.

11 THE COURT: Okay. So those are the two I have. I  
12 don't know if you have any others.

13 MR. HANSHEW: Yes Judge, if I could. I'll just try  
14 to, and I want to hopefully get these right, because my  
15 objections obviously were to the first version.

16 THE COURT: No, I'm talking about corrections.

17 MR. HANSHEW: Well, so -- so there was, for example, a  
18 correction that -- on page six and I had paragraph seven. It  
19 stated that Gireud was the sole owner and managing member.  
20 That's not true. He was the organizer, not owner, according to  
21 the documents --

22 THE COURT: To the incorporation.

23 MR. HANSHEW: -- the secretary of state documents.

24 And then --

25 THE COURT: All right. Hold on.

1 Ms. Kanof?

2 MS. KANOF: I think that's correct, Your Honor, and  
3 then Delgado LLC, there's no such thing as an owner.

4 THE COURT: Okay. So organizer, Mr. Luevano?

5 PROBATION OFFICER LUEVANO: Yes, Your Honor, I'll have  
6 that corrected.

7 MR. HANSHEW: Then, Judge, on page --

8 THE COURT: And if you miss something, we can just go  
9 through your objections and...

10 MR. HANSHEW: That's what I was just trying to -- I  
11 was trying to figure out which ones were the --

12 THE COURT: Yeah, let's just go through the objections  
13 and we'll pick them up that way.

14 MR. HANSHEW: Okay. Okay.

15 THE COURT: All right. So let's start with -- okay.  
16 Objection One, loss valuation and sophisticated means. Okay.  
17 So, it seems like you're objecting to the use of the  
18 32-million. And so my calculations -- let me find those --  
19 it's the 32-million minus -- I think there was like 18,300 --  
20 \$18,321,093.00 that were paid to Mitsubishi and some, I don't  
21 know, 3-million or something like that.

22 MR. HANSHEW: 3.54.

23 THE COURT: So I would take the 32 minus those amounts  
24 and that would be the loss amount from that.

25 MR. HANSHEW: Okay.

1 THE COURT: So the amount that Mr. Delgado was working  
2 with as his own money.

3 So if we do that math -- I know I did it somewhere.  
4 It's \$10,328,797.00. We have 32-million that was paid by  
5 C.F.E. Then Mr. Delgado paid out 21,771 and -- well,  
6 \$21,771,203. So he kept in the account, 10,328,797 that we  
7 have this from the trial. I would assume that's the money he  
8 was going to try to keep or as much of it as he could. That,  
9 to me, is the loss from the 32.

10 MR. HANSHEW: There was also, additionally, another  
11 4.2-million that went to the engineering firm, Judge, as well.

12 MS. KANOF: Your Honor, I don't --

13 THE COURT: I thought that was -- I thought from the  
14 trial we weren't exactly sure if that was an issue.

15 MS. KANOF: I would object to that as being any  
16 evidence that there was ever any evidence of that. There was  
17 cross-examination to that, but it was a series \$4.2-million  
18 going to who knows what.

19 MR. HANSHEW: Well, but the wire transfers showed  
20 where it went. The government has the burden to show that is a  
21 part of the loss or not.

22 THE COURT: I'm the fact finder at the restitution  
23 hearing from -- or from the evidentiary hearing from a  
24 preponderance and from the trial, I didn't get that that was a  
25 real engineering firm, so I'm not giving him credit for that.

1 MR. HANSHEW: We'd object to that, Judge, as for the  
2 record.

3 And then additionally in terms of the Court's, you  
4 know, calcu- -- I understand it's calculations. We object  
5 again that there's no loss in this case. The guidelines say  
6 and they're very, very specific about this, is that you're  
7 looking at the amount that the defendant intentionally intended  
8 to take this loss.

9 And as the Court mentioned earlier, it didn't make  
10 sense that, for example, the starting point that probation came  
11 in here, which is that he was trying to take all of this  
12 32-million. The Court acknowledged that. But that same kind  
13 of common sense analysis applies equally to the total of these  
14 transactions, because it would make no -- you saw and heard in  
15 the trial all sides involved were still trying to make this  
16 deal work. I mean, they went on through that. It was  
17 prolonged. And in fact in the end, we know the two sides, once  
18 they knocked out the middleman on this, in fact consummated  
19 this agreement all to their benefits. They all got better  
20 deals, because they didn't have to pay to the middle person in  
21 this, which was F.G.G. and Mr. Delgado as their representative  
22 in their case.

23 Additionally, I know that you saw in the agreements  
24 with F.G.G. that Mr. Delgado was entitled to upwards of  
25 65 percent of the amount that was to go to them. And so you

1 have a contract for \$121-million, right, and 102 of that is to  
2 go to Mitsubishi. That leaves the remaining \$19-million and --  
3 that was to go there, and so, you know, that's even less than  
4 what in this -- in the course conclusion Mr. Delgado is keeping  
5 here. There is no evidence here in our opinion, Judge, that he  
6 intended in this initial payment to defraud, to take any of  
7 this money that he wasn't authorized to take, Judge.

8 And again, I harken back to what I started with this  
9 which is, you know, there doesn't have to be any loss in a  
10 fraud. And frankly, that is what's very clear in this case.  
11 Nobody lost anything. And for sure, there's no evidence by the  
12 government that Mr. Delgado intended to create that loss on any  
13 entity.

14 THE COURT: Okay. You're objection is noted.

15 MS. KANOF: Your Honor, can I respond?

16 THE COURT: Sure.

17 MS. KANOF: I don't how -- I know they have this  
18 benefit argument, which is absolutely absurd. They're taking  
19 it from the settlement agreement that now the middlemen were  
20 out of it. That's ridiculous.

21 The residence of Agua Prieta paid billions of dollars  
22 more for the generation of energy that they would not have paid  
23 for had Mr. Delgado not committed this fraud. Mitsubishi  
24 sustained a loss. C.F.E. sustained a loss, albeit a loss  
25 that's recognizable under the restitution statute, but the



1 actions of Mr. Delgado, the jury certainly believed it.

2 Subsumed under his loss argument is the sophisticated  
3 means argument. And I don't know if the Court is going to  
4 address that separately or if the Court or if Mr. Hanshaw is  
5 including that in his idea that since there's no loss there's  
6 no sophisticated means, because I would like to address the  
7 specifics.

8 THE COURT: Oh, I didn't hear him say that.

9 MS. KANOF: It's kind of conflated.

10 MR. HANSHEW: It's because probation put it all in one  
11 paragraph, so I responded, in kind, not to confuse the Court.

12 MR. COURT: Right. Right now, I just want to talk  
13 about is the loss.

14 MR. HANSHEW: Right.

15 THE COURT: And so I hear your objection and it's  
16 overruled, and certainly you can take that up with the Fifth  
17 Circuit.

18 MR. HANSHEW: And for the record, Judge, Ms. Kanof's  
19 statements or argument are not evidence. She did not put on  
20 evidence and she's talking about billions of dollars now to the  
21 residence of Mexico. It shows further what ridiculousness the  
22 loss is in this case.

23 MS. KANOF: Your Honor, a representative from the  
24 C.F.E. did testify to that loss. It was a lawyer to C.F.E.,  
25 who talked -- who testified of how much money they had to spend

1 because of the fact that they didn't have the generators.

2 THE COURT: I'm drawing a blank on that. I don't  
3 remember that witness.

4 Do you remember that witness?

5 I know I read a document like that, but I don't --

6 MR. HANSHEW: I know C.F.E. submitted a request in  
7 this proceedings for \$1.3-billion or something like that.

8 MS. KANOF: Ms. Arreola says it was an affidavit.

9 THE COURT: I did read that, but I don't remember the  
10 witness.

11 So, anyway, that's overruled.

12 Did you have anything else on that amount, on the loss  
13 amount?

14 MR. HANSHEW: No Judge, just that and my written  
15 objection.

16 THE COURT: Okay. So now the sophisticated -- you're  
17 objection to sophisticated means. What is the guideline on  
18 that, Mr. Luevano?

19 PROBATION OFFICER LUEVANO: 2B1.1, Your Honor.

20 THE COURT: 2 B 1.1 --

21 PROBATION OFFICER LUEVANO: 2B1.1(b)(1)(k).

22 THE COURT: 2B1 -- wait. 2B1.1 --

23 PROBATION OFFICER LUEVANO: I'm sorry. 2B (10)(c)  
24 [sic], which is on page 90.

25 THE COURT: Page 90?

1 PROBATION OFFICER LUEVANO: And it's letter (c).

2 THE COURT: "(c)." Okay.

3 And the whole thing reads: If a defendant relocated,  
4 participated or relocated in a fraudulent scheme to another  
5 jurisdiction to evade law enforcement or (b), a substantial  
6 part of the fraudulent scheme was committed from outside the  
7 United States or (c), the offense otherwise involves  
8 sophisticated means and the defendant intentionally engaged in  
9 or caused the conduct constituting a sophisticated means,  
10 increased by two levels.

11 So let's see if we have a definition of  
12 sophisticated -- I think there's a definition of sophisticated  
13 means somewhere; is there not, Mr. Luevano?

14 PROBATION OFFICER LUEVANO: There is, Your Honor, if  
15 you can give me a moment, I can find that for you.

16 THE COURT: Mr. Hanshaw, do you have it right there by  
17 any chance?

18 MR. HANSHEW: I'm sorry, Judge. I just lost my -- I  
19 don't. I apologize, Judge.

20 THE COURT: Okay. We'll find it in here.

21 MR. HANSHEW: I know that it has and where we're going  
22 to get to, it has the reference of offshore accounts.

23 THE COURT: In the definition.

24 MR. HANSHEW: Sure. But it doesn't say "shall," as we  
25 know by any of these definitions. And so, as I noted, I

1 understand why the guidelines would put that in there as an  
2 exemplar of something that could constitute sophisticated  
3 means, but that doesn't take away the obligation of courts when  
4 they look at the individual case and the facts that are  
5 present.

6 And if you look at this case, the wires in this case  
7 were open and notorious. I mean, the other entities involved  
8 in this business transaction received the monies from that  
9 account.

10 You know, I could see a scenario where, let's say, you  
11 know, you have one and you skip, you skip right, you skip a  
12 couple around, and then you pass it through some rails and send  
13 it to the folks, so they can't track where it is. I mean, it  
14 was the opposite. It went from Mexico, to this account, to  
15 paid out.

16 And in fact, you even had Gireud writing letters  
17 saying, okay, send us our next disbursement, you know, from the  
18 account.

19 THE COURT: Right.

20 MR. HANSHEW: You have documents that were filed in  
21 Mexico. That's the only way Mexico could reroute this. So  
22 C.F.E. had knowledge of it. That's how they were authorized  
23 and allowed to send that. And so this is not the scenario of  
24 --

25 THE COURT: But if you look at the whole deal, it's

1 not just the offshore -- use of the offshore thing. It's the  
2 way that kind of a Chinese wall was built between C.F.E. and  
3 F.G.G. and Mitsubishi. And the only the person that could  
4 cross over that wall was Mr. Delgado, because that was  
5 necessary to the scheme.

6 He had to totally fulfill the contract of C.F.E., so  
7 he could get C.F.E.'s money and then make Mitsubishi and F.G.G.  
8 believe that that's not what happened, that there was less  
9 money available. Then that provided a little pot from which  
10 Mr. Delgado could take his property.

11 And so the sophistication of the scheme is not just  
12 the offshore account. It's the whole entire scheme and that's  
13 what's sophisticated about it. I mean, it's certainly much  
14 more sophisticated than any scheme you know a regular Joe-guy  
15 off the street in El Paso would come up with.

16 MR. HANSHEW: Right. And I guess -- if I could  
17 address that Judge. Thank you.

18 There's also a very valid argument in response to that  
19 that played out in this case, which is that, yes, when you are  
20 a broker, which is you know I think the best way you can kind  
21 of analogize this. You're the broker between these two  
22 behemoths. I mean you are talking about the second largest  
23 government owned monopoly power agency, C.F.E., and Mitsubishi,  
24 a Forbes, you know probably ten, okay, in the list of Forbes;  
25 for sure in the top 50; and broker, who put them together the

1     only way they got to -- for C.F.E. to get rid -- I'm sorry --  
2     Mitsubishi to get rid of these mothballed turbines that they  
3     already got paid for from Brazil, okay, was because of Mr.  
4     Delgado's connections to C.F.E., and C.F.E. in a turn hadn't  
5     dealt with Mitsubishi America, this particular entity. So of  
6     course anyone that's creating that and has F.G.G. in that would  
7     be concerned that at some point these guys, these behemoths,  
8     are going to cut you out of the deal, which they did in the  
9     end. Okay? That's exactly what happened in the end.

10           So the idea that you know he created this island where  
11     he was, you know, blocked every one out so that he was running  
12     it, well, there's a perfectly legitimate reason for that,  
13     because we saw what happened in in case. And it's also not --  
14     I would say it's not particularly sophisticated in the sense  
15     that it was just a business transaction here.

16           You know, what the fraud, which is what we're looking  
17     at to see the scheme here, the fraud in their own document is  
18     sending an e-mail, okay, sending the e-mail with a letter, with  
19     a letter that was purportedly forged, you know, sending that.  
20     That's what, when you read the indictment, what -- they have to  
21     do that, because that's the only way they can try to hook in  
22     U.S. jurisdiction to this case, which was otherwise everything  
23     happened in Mexico. And that's just not sophisticated, Judge,  
24     we would argue.

25           THE COURT: Well, what about if the two points were

1 added instead for --

2 MS. KANOF: Sophisticated money laundering, Your  
3 Honor, 2S1.15.

4 THE COURT: I wasn't even going to go that far. I was  
5 going to stay in the same one about all of this foreign country  
6 stuff.

7 Send me back to that again, Mr. Luevano. Where am I  
8 looking?

9 PROBATION OFFICER LUEVANO: Which one are we looking  
10 at?

11 THE COURT: (10) (b) .

12 PROBATION OFFICER LUEVANO: Page 90.

13 THE COURT: 90. Thank you.

14 Okay. So, a substantial part of a fraudulent scheme  
15 was committed from outside the United States. You just said  
16 everything was committed in Mexico and the jurisdictional  
17 attachment was the e-mail and the letter.

18 MR. HANSHEW: Well, I don't think any of the  
19 fraudulent part of the -- the substance part of what occurred  
20 here occurred in Mexico -- I mean, what occurred in Mexico was  
21 a business deal. I mean, that's our position, is that the  
22 business deal was a business deal that was legitimate and  
23 consummated in Mexico.

24 The fraud that's alleged is the fraud -- is these  
25 e-mails and the money wire transfers and those in and of

1 themselves wouldn't constitute that and/or sophisticated.

2 THE COURT: Well, because the money was being wired  
3 from Mexico to Turks and Caicos.

4 MR. HANSHEW: Well, the government had to put on their  
5 case. We argued they didn't and we asked for a motion for  
6 acquittal, but their argument at trial was that the wire  
7 transfer went to New York first and then back through, because  
8 without that -- which we still maintain, you know, that's  
9 incorrect, that they didn't have jurisdiction and they didn't  
10 prove that point, but if you were to take their arguments,  
11 Judge...

12 THE COURT: For those two reasons we would add two.  
13 If you have any other objections that you want to make on the  
14 record, you can go ahead and perfect your record on that.

15 MR. HANSHEW: Okay. As to that issue, I don't have  
16 any --

17 THE COURT: As to that issue.

18 MR. HANSHEW: Correct, Judge.

19 THE COURT: Let's get back to your objections then.  
20 That was the first one, right?

21 MR. HANSHEW: Yes, Judge.

22 THE COURT: So then number two.

23 MS. KANOF: Excuse me, Your Honor, may I respond to  
24 the sophisticated means argument?

25 THE COURT: Oh, sure.



1 MS. KANOF: Because I talked to Sandra Torres  
2 extensively.

3 THE COURT: You spoke to who?

4 MS. KANOF: Sandra Torres about it.

5 THE COURT: Oh.

6 MS. KANOF: When I saw that she gained two points for  
7 sophisticated means, I called Officer Torres to discuss it with  
8 her, because I also thought 2S1.1 5(A) sophisticated money  
9 laundering --

10 THE COURT: Hold on. 2S1.1?

11 MS. KANOF: 2S1.1, which is the money laundering  
12 guideline.

13 THE COURT: Uh-huh.

14 MS. KANOF: 5(A), sophisticated laundering I thought  
15 it applied as well.

16 THE COURT: 2S1.1 5(A). Okay. I got A, one and two,  
17 B, one and two. Am I in the right place? Oh, your looking at  
18 the application notes.

19 MS. KANOF: Yes. I'm sorry. I'm looking at the  
20 application notes. I'm sorry Your Honor, yes.

21 THE COURT: Okay.

22 MS. KANOF: Application note number 5, because I  
23 thought an adjustment for sophisticated laundering also  
24 applied.

25 So Ms. Torres, first of all, told me she did a lot of

1 talking with the commission about all of the adjustments in  
2 this case, and that she did in fact think that this applied,  
3 but didn't that she couldn't apply both, and so the advice that  
4 she received was to do it under the wire fraud statute instead  
5 of under the money laundering statute.

6 But if the Court will look at this application note,  
7 it applies as well, that the sophisticated money laundering  
8 incurred because just the use of an offshore account would  
9 apply for making it a complex or intricate offense.

10 Remember that the original agreement in the original  
11 contract on the bid was that they were supposed to use a Wells  
12 Fargo account in El Paso. And testimony from Mr. Gireud was he  
13 did not give permission for the money to be used in the  
14 offshore account. And the Court will also remember that that  
15 offshore account was not in Mr. Delgado's name. It was a law  
16 firm, Skippings and Rutley, that was used precisely to hide  
17 money.

18 And so it applies to both of those adjustments. And  
19 what Ms. Torres told me was, I can't do both. I could only do  
20 one of them. So they suggested that she used the wire fraud  
21 one.

22 And with -- what's missing here, Your Honor, with  
23 regard to the appearance of legitimate actions are the  
24 fraudulent actions such as a fraudulent apostille on the  
25 testimony of a young notary here in El Paso who said that's not

1 my signature and that's not the stamp that I used, and all of  
2 the fraudulent documents that Mr. Delgado provided to C.F.E.  
3 and to Mitsubishi that didn't have Mr. Adam's signature on it,  
4 that you could hold up to the light and see had been co-opted  
5 from other documents. The typical fraud that occurs, that was  
6 made sophisticated by the use of offshore accounts that didn't  
7 have Mr. Delgado's name it, the testimony from the C.F.E.  
8 officials was, we got this check or this wire transmission from  
9 an account that we never even heard of. And we thought it  
10 should have been from Wells Fargo. And it took extra time and  
11 time is money for these corporations with regard to interest on  
12 large amounts of money.

13 So what's missing here is the fact that an actual  
14 fraud was committed, that to the extent that the premise was  
15 ostensibly some legitimate contracts. The fraud is what the  
16 jury saw, and it would be an extra 2 points whether the money  
17 laundering guideline for sophisticated money laundering was  
18 applied or a sophisticated means was applied from wire fraud.  
19 So either way, the government agrees with probation that it was  
20 appropriately added.

21 THE COURT: That the sophisticated means was  
22 appropriately added?

23 MS. KANOF: Yes.

24 THE COURT: Okay. Why is it that we can't have  
25 alternate grounds for the two levels?

1 MS. KANOF: She has told me that the commission told  
2 her she couldn't do both.

3 THE COURT: Right. I mean, we can two for this, two  
4 for that, two for that and add six, but we could say, we're  
5 going to add two for sophisticated means, because so much of it  
6 was outside the United States and because it was a complex  
7 money laundering deal under this one.

8 MS. KANOF: I think --

9 THE COURT: We're going to add two for one of those  
10 three. And if the Court doesn't think there's enough for one  
11 then what about the other, what the other one? Otherwise, it  
12 goes up on appeal. They send it back to us. So then we do  
13 another sentencing and we use the other one. Then it goes up  
14 on appeal and they don't like that one. Then they send it back  
15 to us and we use the other one and then it goes back on appeal.  
16 Then if they don't like any of them, well, then we come back  
17 and adjust the score.

18 MS. KANOF: I see no prohibition whatsoever for the  
19 Court to order in the alternative that if it's 2 1.1 also.

20 THE COURT: To me, that would be the most efficient  
21 way to operate, that we're adding two levels. And it would be  
22 under either of those three provisions. And if the appellate  
23 court thinks that neither of those three apply, well, then  
24 they'll send it back and we'll rescore it and resentence.

25 MS. KANOF: I would propose that would be optimum,

1 Your Honor.

2 THE COURT: All right. So for those three reasons,  
3 the Court would asked the two levels.

4 So, Mr. Hanshew, now whatever objections --

5 MR. HANSHEW: A common theme, Judge.

6 We object. And you know, I think it's telling that  
7 probation spoke to the commission on the very point and  
8 expressly decided not to do what's being proposed right now.

9 Obviously, it wasn't in the PSR and scored on that  
10 particular one, so I can't pretend that, you know, speak to the  
11 law on this particular one, Judge. I can only read what it  
12 says in terms of the express language.

13 But we would, for purposes of keeping the record, we'd  
14 object that, you know, we don't know what grounds probation  
15 would have done to score that and/or what -- why it should not  
16 have been done, which is what they decided.

17 THE COURT: All right. Anything else on objection  
18 two?

19 MR. HANSHEW: Let me see.

20 THE COURT: And to read it to you, counsel objects to  
21 paragraph 90, 91, 138, 143, requesting -- M.P.S.A. is  
22 requesting 24 --

23 Are we on to that one or what -- how --

24 MR. HANSHEW: So number one was because in the PSR  
25 they did loss and sophisticated in the same paragraph, so I

1 respond in kind. So that was number one the second part.  
2 We're done with that.

3 THE COURT: So now we're at two.

4 MR. HANSHEW: Two, Judge, is restitution.

5 THE COURT: So that's -- and Mitsubishi is here, and  
6 we'll hear from them and we'll figure out what the answer to  
7 that one is.

8 MR. HANSHEW: Yes, Your Honor.

9 THE COURT: Okay. So now, on three -- okay. So I  
10 think that one has been solved as well, right? That condition  
11 is no longer a condition.

12 I don't know that I ordered someone --

13 MR. HANSHEW: I thought they did. Okay. But they  
14 still --

15 THE COURT: -- to pay whatever it is in the millions  
16 of dollars immediately, especially after someone has been in  
17 the penitentiary.

18 MR. HANSHEW: Okay. If that's what the Court -- yeah,  
19 okay, Judge.

20 So, the only remaining concern I had with that one is  
21 the probation's response was that certain of the originally  
22 enumerated special proposed special conditions, it turned out  
23 were part of either mandatory or standard conditions. To the  
24 extent they're part of mandatory -- and I went back and  
25 reviewed the statute. I don't see that any of these were

1 mandatory, which would mean they're standard which would mean  
2 the Court has discretion and not to impose those. So, we would  
3 again object.

4 THE COURT: If we're going to impose reasonable  
5 conditions, unless Mr. Delgado has a bunch of money stocked  
6 away somewhere, I don't know how I order him to pay in the  
7 millions of dollars immediately.

8 MR. HANSHEW: Okay. And that's our objection, Judge.

9 And then the other objection, and just to be certain  
10 that it's excised and not inserted in the standard conditions,  
11 was there was a -- in addition to the conditions that related  
12 to payments schedule and timing and lump sums, there was also a  
13 proposed condition that required Mr. -- or authorized him --  
14 sorry -- probation to share information it obtained from  
15 Mr. Delgado with the U.S. Attorney's Office. So we objected to  
16 that. There's plenty of legal procedures that the government  
17 should go through before they obtain, you know, sensitive  
18 financial information. And the government shouldn't be using  
19 probation as essentially their -- you know, their attack dog on  
20 that.

21 There is subpoenas. There is depositions. There is a  
22 procedure for that. And to have probation be hand-in-hand with  
23 the government working on those issues post-judgment in this,  
24 would sure give an appearance of impropriety. And I put some  
25 case law objecting to that, Judge.

1 THE COURT: And Mr. Luevano, what are the situations  
2 where it would be wise or reasonable to give that information  
3 to the U.S. Attorney's Office.

4 MR. HANSHEW: I can tell you.

5 THE COURT: Most of the time they wouldn't even care.

6 MR. HANSHEW: I can tell you the origin of this,  
7 Judge, actually.

8 THE COURT: Okay.

9 MR. HANSHEW: Because it's another one of my cases.

10 There was a case with Mr. Adrian Peña and the  
11 government was seeking and continues to seek monetary payments.  
12 Probation tried to amend the supervised conditions to include a  
13 provision like this so that they could then hand the stuff over  
14 to the government, because --

15 THE COURT: But why?

16 MR. HANSHEW: Because they wanted to help the  
17 government, Judge.

18 THE COURT: Help the government do what?

19 MR. HANSHEW: Give the financials that they had to the  
20 government, because the government had its own forfeiture and  
21 civil proceedings and they were trying to get at where this  
22 money is. And so what it is, is they are trying to backdoor  
23 what their requirements are from the government by allowing and  
24 having the Court order that -- and I can tell the Court, Judge  
25 Cardone denied that request. It was Ms. Kimmelman in our



1 office worked on that. I had worked on the original case. And  
2 it came up in that process. And Judge Cardone denied that  
3 request for them for basically the same reasons we are saying  
4 here, which is, government, you go, if you have your  
5 proceedings and you're trying to obtain these financial -- this  
6 financial information, use the statutory tools at hand, but  
7 don't have probation become, you know, your teammate, your  
8 lackey, whatever it may be in this, because probation is  
9 supposed to be working with a person that's under their  
10 supervision to assist them and help them on probation not to  
11 be, you know, essentially a second to the prosecution.

12 THE COURT: Right. And I suppose that's one way of  
13 looking at it, but you could also look at it that probation is  
14 part of the judiciary and the judiciary's function is to make  
15 people whole with their restitution orders and those kind of  
16 orders, and so I'm not sure that I wholeheartedly agree with  
17 that position. I mean, the government is the government.  
18 They're the executive branch. They do what they do. But the  
19 judiciary also has a role and we're also charged with making  
20 people whole through restitution.

21 MR. HANSHEW: I don't disagree with that, Judge.  
22 That's a very obvious point. I think what we're saying is  
23 judiciary shouldn't be working with the information that it --  
24 it receives sensitive information it receives from a person  
25 that's a supervisee of the Court, vis-à-vis probation, and then

1 handing that over to the government, when there are established  
2 procedures for the government to go about in front of a court,  
3 no less a federal court, to see whether they get information.

4 THE COURT: Right. Yeah. And I don't have any  
5 problem with probation not doing that on their own and  
6 approaching the court and having a hearing and turning over the  
7 information.

8 MR. HANSHEW: Right.

9 THE COURT: I mean, I don't see that somehow the  
10 judiciary is insulated from that process. I don't think it is.

11 MR. HANSHEW: Right. And that's why we objected,  
12 because this condition authorized probation to just hand it  
13 over.

14 THE COURT: And I think a lot of those conditions with  
15 probation was making determinations on its own have been  
16 eliminated for all of those reasons.

17 MR. HANSHEW: Oh. Okay. Thank you, Judge.

18 THE COURT: So, we're on -- are we on two or three?

19 MR. HANSHEW: Three. This is three still, so I think  
20 we've dealt with the special conditions.

21 There was also, Judge, a \$5,000 fine that they  
22 recommended imposing in this case and asserted that he has the  
23 ability to pay this fine due to his ability to gain suitable  
24 employment, which, you know, sorry for laughing, but I mean he  
25 has a 16-year sentence.

1 THE COURT: I don't know what's going to happen with  
2 that or with this, but there is a good chance that Mr. Delgado  
3 will be close to 70 when he gets out of the penitentiary and  
4 will not have his bar license.

5 MR. HANSHEW: Correct.

6 THE COURT: And unless he's got money stocked away or  
7 wins the lottery or something, I just don't -- I just don't see  
8 it, so I'm not focussed on that.

9 MR. HANSHEW: All right. Thank you, Judge. That  
10 would be move us to four.

11 THE COURT: Which one was that?

12 MR. HANSHEW: That was part of three, Judge.

13 THE COURT: Okay. What else on that?

14 MR. HANSHEW: I believe we've covered it all, Judge.

15 THE COURT: Okay. Then four is the asset forfeiture  
16 thing.

17 MR. HANSHEW: Right. We've dealt with that.

18 THE COURT: Apparently the Wrangler already was taken  
19 by the authorities and had it administratively.

20 MR. HANSHEW: Right.

21 THE COURT: And five?

22 MR. HANSHEW: We resolved that one, Judge.

23 THE COURT: So that one is done.

24 Six?

25 MR. HANSHEW: Six? We still maintain that objection,

1 Judge.

2 THE COURT: So let me see. (Reading.)

3 Okay. That should be to sign, page 7, Mr. Luevano,  
4 under 6, signed for F.G.G. account. (Reading.) It was  
5 believed was authorized...

6 Okay. So, I'm going to overrule your objection. And  
7 as to the belief, do you have any evidence as to that?

8 MR. HANSHEW: Other than we saw all of the bank  
9 records during Mr. Gireud's testimony and during when he  
10 testified that his family had access to the account, I believe.

11 THE COURT: All right. So that's overruled as well.

12 Okay. So, seven?

13 MR. HANSHEW: And I think if I can have one moment.  
14 Let me just look through these, Judge, because I think I can  
15 probably summarize them all.

16 THE COURT: Okay.

17 MR. HANSHEW: You know what? Okay. I don't think I  
18 can.

19 THE COURT: All right. So, let's see. Seven?  
20 Objects, clarifies does not include information by long term  
21 service agreement intrinsic to the contract. (Reading).

22 Okay. I'm going to overrule that objection. Do you  
23 have any evidence as to that claim?

24 MR. HANSHEW: I think the government will concede that  
25 Mr. Mitsubishi executed a long term service agreement.

1 THE COURT: On the second go-around?

2 MR. HANSHEW: Correct, Judge.

3 THE COURT: Right. I think that's true. Is that what  
4 you were saying?

5 MR. HANSHEW: Yes, Judge.

6 THE COURT: I think that's in evidence. Is it not,  
7 Ms. Kanof? Or at least I saw it in the affidavit that was  
8 presented by Mitsubishi.

9 MS. KANOF: I don't remember, Your Honor, because --

10 THE COURT: I don't think it came in at trial, but I  
11 did read it somewhere.

12 MS. KANOF: Maybe in the settlement agreement?

13 THE COURT: No. They have a new -- they sold the  
14 generators for cheap and then they have this other service  
15 agreement.

16 MS. KANOF: Yeah, that would be in the settlement  
17 agreement then, because they don't sell the generators until  
18 2013.

19 THE COURT: (Reading.) Wait a minute. What does that  
20 say? What is it saying exactly? They didn't execute it with  
21 themselves, did they?

22 In any event, I'm going to overrule that objection.

23 Objection number 8, paragraph 13 of the presentence --  
24 (reading). Contract bid and specification documents made clear  
25 the equipment would be encumbered. I'm overruling that

1 objection.

2 And what evidence do you have that -- because all of  
3 the testimony was that it was not going to be encumbered, at  
4 least that's what Mitsubishi thought. You're saying that these  
5 documents actually say that?

6 MR. HANSHEW: I think in the totality, if you read  
7 through all of the contract and the bid specifications, there  
8 was discussion that there could be encumbrances.

9 THE COURT: Okay. I'm overruling that objection.

10 Number 9? (Reading.) Clarifies that the contract  
11 materials are referenced in the pledge and/or contract -- wait.  
12 Okay. (Reading.)

13 All right. So, basically objecting to what paragraph  
14 15 said and Delgado believes something different, from those  
15 documents and the appellate court I am sure will be able to  
16 figure out, you know, what's right, so I'm going to overrule  
17 that objection.

18 Objection number 10? Objects to conclusion. F.G.G.  
19 and are -- we are unaware. Okay. "Were." I guess that's a  
20 "were," w-e-r-e -- were unaware that the equipment would be  
21 pledged. Delgado objects to the conclusion. Okay. So I'm  
22 going to overrule that objection.

23 MR. HANSHEW: What was the spelling issue, Judge?

24 THE COURT: The what?

25 MR. HANSHEW: The spelling.

1 THE COURT: On 7?

2 MR. HANSHEW: You said it should have been something  
3 else?

4 THE COURT: Oh, I think it says F.G.G. and/or  
5 M.P.S.A., we unaware -- and I think it --

6 MR. HANSHEW: It is "were."

7 (Counsel speaking over the Court.)

8 THE COURT: -- it should be were un- -- were --

9 MR. HANSHEW: -- came up recently in our office.

10 THE COURT: Huh?

11 MR. HANSHEW: And I've noticed a couple of corrections  
12 you've made. You have something different than what my  
13 objections --

14 THE COURT: I do?

15 MR. HANSHEW: And we found out recently that I guess  
16 probation uses some type of scanning software.

17 THE COURT: What's the date of your report? Maybe I  
18 got the wrong report.

19 MR. HANSHEW: No, this is my objection, July 14th.

20 THE COURT: Oh, that's your objection?

21 MS. MAUREEN: Your Honor, if I may? I can let you  
22 know what happened to --

23 THE COURT: Oh, I know. Oh, this is -- okay. It's  
24 because I'm reading off of probation's deal.

25 MS. FRANCO: Right.

1 THE COURT: Sorry. Yeah.

2 MS. FRANCO: When they are scanning in it's changing  
3 the formatting. I've spoken to David Natividad about it, Your  
4 Honor, so that will stop hopefully in future submissions to the  
5 Court. But basically what's happening is when we turn over a  
6 document to probation, they'll scan it in so that they can  
7 electronically submit it to the Court. And in the process of  
8 that scanning, that PDF to a Word document is where the problem  
9 is coming up. But we were made aware of it a couple of weeks  
10 ago and I spoke to Mr. Natividad about it, so just so that you  
11 know, Judge, that it is an issue that's come up before.

12 THE COURT: It's the scanner that's doing the --

13 MS. FRANCO: Exactly, Your Honor.

14 MR. HANSHEW: Yeah.

15 MS. FRANCO: It's not that we're illiterate.

16 MR. HANSHEW: Yeah. No, I was getting worried, Judge,  
17 because I'm pretty anal and I try to be about -- and there was  
18 a couple other. When you mentioned earlier, I just ignored and  
19 I realized something was wrong here.

20 THE COURT: All right. So let's see. On number 11,  
21 Delgado objects and denies the voracity of the information  
22 contained there.

23 MS. KANOF: Your Honor, there's two E.C.F.s.

24 THE COURT: There's two what?

25 MS. KANOF: There's two E.C.F.s. 263 has the



1 mistakes, but 263-2 has it corrected.

2 THE COURT: Ms. Kanof, you are like in another  
3 universe from me talking about -- I mean, I can barely read and  
4 you expect me to figure out there's two E.C.F.s --

5 MS. KANOF: Yeah.

6 THE COURT: -- on the same document?

7 MS. KANOF: There are or they have the same objections  
8 in them.

9 So, evidently, what Ms. Franco is talking about is  
10 when it was originally scanned, it was filed as 263, and it has  
11 the mixed up stuff. And then it subsumed in E.C.F. 263-2 and  
12 it's been corrected.

13 THE COURT: Okay. Mine doesn't even have that on  
14 here.

15 MS. KANOF: Okay. Sorry.

16 THE COURT: So I probably have the first one. But  
17 this one has no markings.

18 MS. KANOF: Okay. Just trying to help.

19 THE COURT: I'm not sure how I got this. I think I  
20 printed them without the headers, because they get in the way.

21 All right. So then -- where in the heck were we,  
22 Supnet?

23 MR. HANSHEW: Number 11.

24 THE COURT: Okay. On number 11. So, Delgado objects  
25 and denies the voracity. So, I'll overrule the objection and

1 ask if you have any evidence to support that denial.

2 MR. HANSHEW: Just the same we raised and argued at  
3 trial, Judge.

4 THE COURT: So then, number 12. Delgado objects and  
5 clarifies the alleged forged letter was never made part of the  
6 pledged instrument.

7 Well, I don't remember -- what happened there,  
8 Ms. Kanof? Do you remember the pledge of the -- are we talking  
9 about the pledge of the generators and the letter -- that the  
10 letter from the big guy over there at Mitsubishi --

11 MS. KANOF: For Mr. Adams.

12 THE COURT: Adams.

13 MS. KANOF: Was the letter from Mr. Adams made part of  
14 the pledge instrument? I don't think it matters whether it  
15 was.

16 THE COURT: Well, it -- but there is an objection, so  
17 that matters, and I have to address it. I mean, if it's not  
18 going to change the calculation --

19 MS. KANOF: I'm trying to remember. Let's see.  
20 Ms. Arreola is checking something. We actually have the  
21 exhibits with us.

22 MS. ARREOLA: Your Honor, would it be worthwhile to  
23 proceed to the next one and I'll pull out the pledge agreement?

24 THE COURT: Sure. Absolutely. Yes, ma'am. Thank  
25 you.

1 MS. KANOF: We have the exhibits with us in the  
2 courtroom, Your Honor.

3 THE COURT: Okay.

4 So then 13 is Delgado objects and denies the  
5 information contained there. Okay. 24.

6 Now, I'm not even sure I got the right -- that this,  
7 when you're saying 24, that it's really 24 in mine.

8 So, Mr. Luevano, maybe you can figure this out.

9 But if it's really 24, they're saying that on January,  
10 30th Delgado prepared a letter -- concerns -- (reading). Would  
11 not be responsible for any letter of credit.

12 I think their objections as to the first generation of  
13 PSR, and so now I have the next generation and the numbers are  
14 wrong.

15 MS. KANOF: I've got the first one, Your Honor.

16 And --

17 THE COURT: So when he says 21, what does 21 say?

18 MS. KANOF: 21 says, on January 10th, a fraudulent  
19 letter was transmitted to C.F.E. In this fictitious letter,  
20 someone purported to be John Adams, Mitsubishi's Vice President  
21 of New Projects, indicated to Gireud that Mitsubishi had  
22 reviewed the desirability of pledging its equipment instead of  
23 posting a letter of credit as discussed.

24 It's kind of long. Do you want me to read the whole  
25 thing?

1 THE COURT: Wait. Okay. It says on January 12th?

2 MS. KANOF: 10th. On January 10, 2012.

3 THE COURT: So it's 21. It's 21 in the new  
4 generation.

5 MR. HANSHEW: No I think it's the same one.

6 THE COURT: It's the same one. Sorry.

7 MR. HANSHEW: It's the same, Judge. I think it stays  
8 the same.

9 THE COURT: Right.

10 MR. HANSHEW: And 21 is the one that Ms. Arreola was  
11 going to look at and get back to us.

12 And I believe paragraph 24, which is objection 13, is  
13 the same in both iterations --

14 THE COURT: It is?

15 MR. HANSHEW: -- as the PSR.

16 THE COURT: So tell me what the objection is to 24  
17 then. The whole thing?

18 MR. HANSHEW: He denies that.

19 THE COURT: Everything?

20 MR. HANSHEW: Yes, Judge.

21 THE COURT: Okay. Oh, that he prepared the letter.  
22 That's what he's objecting to. Is That what you are saying or  
23 what?

24 MR. HANSHEW: He's denying the totality of that.

25 THE COURT: Okay. All right. So that objection is

1 overruled.

2 Do you have any evidence that you would like to  
3 present on 13?

4 MR. HANSHEW: No, Judge.

5 THE COURT: Okay.

6 Then on 14, as to 26, Delgado clarifies that he had  
7 the authority -- oh, okay. That's overruled.

8 On 15? Okay. I think they -- did you fix those  
9 amounts, Mr. Luevano? I think you did. Do you know? He's  
10 saying that it's not 103 and not 102.

11 PROBATION OFFICER LUEVANO: I think those are the  
12 corrections we made.

13 THE COURT: So that's right.

14 So then as to 16, Delgado objects there was no  
15 evidence presented supporting this assertion, 35. 35, 35, 35.  
16 (Reading.)

17 Okay. Ms. Arreola, was this introduced in evidence,  
18 this letter that he's talking about here?

19 MS. KANOF: It was.

20 MS. ARREOLA: I'm sorry, Your Honor, which paragraph?

21 THE COURT: It's paragraph 35. And it says the  
22 attached -- it's a letter where it says they changed the  
23 payments. That's where the payments were changed; first,  
24 second, third, fourth, fifth and fine; and totals 106-million  
25 instead of 120.

1 MS. ARREOLA: My recollection is that was introduced,  
2 Your Honor, into evidence, but may I look, Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. ARREOLA: Your Honor, I'm going to need a little  
5 more time. I don't know if you want to move on.

6 THE COURT: Sure. That's fine.

7 So then on 17, defendant objects...

8 Okay. And that's also correct, right, Mr. Luevano, we  
9 corrected that?

10 PROBATION OFFICER LUEVANO: It has been corrected,  
11 Your Honor.

12 THE COURT: Okay. On 18, I think that, pursuant to  
13 the objection, the thing about the litigation in Travis County  
14 I think they took it out.

15 MR. HANSHEW: I think they took it out.

16 THE COURT: I think they deleted it.

17 PROBATION OFFICER LUEVANO: That's correct. It was  
18 deleted, Your Honor.

19 THE COURT: So that one is out.

20 Then 19, objection, denies information contained  
21 therein. That's paragraph 65.

22 MR. HANSHEW: Now, here, I don't know if the  
23 paragraphs might change now. This might be where --

24 THE COURT: Farther down where it's changed.

25 MR. HANSHEW: Did they delete --

1           PROBATION OFFICER LUEVANO: That paragraph has now  
2 changed to paragraph 64, Your Honor.

3           THE COURT: 64. Okay. So then when agents later  
4 interviewed Gireud, he said he never signed a letter.  
5 (Reading.)

6           So that objection is -- so I'm going to overrule the  
7 objection and ask if you have any evidence that you want to  
8 present on that.

9           MR. HANSHEW: One moment, Judge, if I can reread that.  
10 Thank you.

11           I guess we refer back to the cross-examination of  
12 Mr. Gireud. I don't have any documents.

13           THE COURT: All right. So then objection 20,  
14 (reading.)

15           As to the math, the numbers, I think, Mr. Luevano, you  
16 made a correction pursuant to this objection; is that correct?

17           PROBATION OFFICER LUEVANO: That is correct.

18           THE COURT: So that's been corrected.

19           As to the other, I'm going to overrule Mr. Delgado's  
20 objection and ask if you have any evidence as to the denial?

21           MR. HANSHEW: The attempt to conceal, Judge,  
22 obviously, you know, we go back to memorandum of understanding,  
23 there was the agreement that delegation of powers by  
24 F.F.G./Gireud to Mr. Delgado that related to this.

25           THE COURT: All right. Then as to 21, objection 21,

1 let me see. Fraudulently deposited any funds.

2 Okay. I'm going to overrule that objection. Is there  
3 any evidence that you want to add to objection 21?

4 MR. HANSHEW: The same as in the prior objection,  
5 Judge.

6 THE COURT: Okay.

7 Then objection 22.

8 Well, Mr. Luevano, what about those? I think some of  
9 those paragraphs have changed. What's your response to that  
10 objection of denial?

11 PROBATION OFFICER LUEVANO: Your Honor, because of the  
12 prior changes, the paragraphs have changed, so now it's  
13 paragraph 74, 75, 77, 78 and 79.

14 THE COURT: From where did you glean that information?

15 PROBATION OFFICER LUEVANO: Here we have they were  
16 gleaned from documents provided by the government, which we  
17 found that were deemed reliable.

18 THE COURT: Let me look at those. Those may have been  
19 introduced.

20 MR. HANSHEW: I don't think so, Judge. These were all  
21 probably taken, and the government could clarify, but from  
22 reports of investigation that they handed to probation.

23 THE COURT: Paragraph 24 is the one about the CPA and  
24 she testified.

25 MR. HANSHEW: Right. But probation didn't look at any



1 testimony. They just took all of the R.O.I.s from the  
2 government and sat down with Ms. Kanof for hours to take her  
3 statements of this, which obviously we objected to that as  
4 well.

5 MS. KANOF: I think she sat down with the agent for  
6 hours, not with Ms. Kanof.

7 MR. HANSHEW: She said she met with you extensively.

8 MS. KANOF: Only for a little while.

9 THE COURT: Well, you-all can discuss that later, but  
10 I'm going to overrule that objection.

11 Do you have any evidence you want to introduce on this  
12 object?

13 MR. HANSHEW: I would note that the Court doesn't have  
14 any evidence in terms of these -- they were never provided  
15 these R.O.I.s to check the sufficiency, the accuracy, the  
16 voracity of them, and so we'd object additionally to that, as  
17 well as to the cross-examination of the accountant that related  
18 to the topic.

19 MS. KANOF: We found the exhibit, Your Honor, if you  
20 want it.

21 THE COURT: Okay. Which one? Which exhibit are we --  
22 which objection are we addressing.

23 MS. KANOF: The objection number we were talking about  
24 was objection number 16. But I think it's helpful to go back.

25 THE COURT: Okay.

1 MS. KANOF: In the PSR, paragraph number 33 is a table  
2 that was in Government's Exhibit Number 49. It was actually  
3 the legitimate letter and it was admitted as Government's  
4 Exhibit Number 49.

5 Paragraph number 35, which is defendant's objection  
6 number 16, was admitted into evidence as Government's Exhibit  
7 Number 50. And if the Court will recall, Government's Exhibit  
8 Number 49, which is in paragraph 33 and shows the bottom line  
9 120.4-million, had Mr. Delgado's little initials at the bottom,  
10 and it was also March 23rd, and Government's Exhibit Number 50,  
11 which was the one that is in paragraph 35 and to which the  
12 defendant is objecting, and objection number 16, does not have  
13 Mr. Delgado's little initials at the bottom, and it changes the  
14 numbers and the total to 106-million -- 106.6 instead of 120.4.

15 If the Court wants to see the exhibits, I can show  
16 you.

17 THE COURT: No, I remember, because that's where I got  
18 the idea that that's where the moving parts were, where the  
19 money was going to come from. So I'm going to overrule 16.

20 But we still -- I don't know if you were able to find  
21 anything on objection 11.

22 MS. KANOF: Which one was objection 11?

23 MR. HANSHEW: Objection 12, Judge. 12.

24 THE COURT: Oh, was it 12?

25 MR. HANSHEW: Yes, sir.

1 THE COURT: 12. I'm sorry. 12.

2 As to paragraph 21, the pledge --

3 MS. KANOF: Oh, the pledge, we're still looking.

4 THE COURT: That the forged letter was never made part  
5 of the pledge that was made in Mexico.

6 MS. ARREOLA: Your Honor, I'm still reviewing the  
7 pledge agreement, which is Exhibit Number 32 and the  
8 translation was at 32-A. I think what they're trying to argue  
9 is that in the event that the letter itself wasn't incorporated  
10 by reference or specifically attached, that it somehow didn't  
11 lead to the pledge agreement. But I think the evidence at  
12 trial made it pretty clear that that letter that was signed --  
13 purportedly signed by John Adams, that forged letter, was the  
14 basis by which Delgado then pledged Mitsubishi's equipment.

15 So regardless of whether or not the letter itself is  
16 referenced or attached to the pledge agreement, that was the  
17 purported authority on which he relied to pledge the equipment.

18 MR. HANSHEW: But to be clear that I'm correct, which  
19 is it is not made part of the pledge instrument. I mean  
20 it's --

21 THE COURT: Where does it say that?

22 MR. HANSHEW: My objection is that the forged letter  
23 was never made part of the pledge instrument.

24 THE COURT: Where does it say that in paragraph 21?

25 MR. HANSHEW: So it was an objection and a

1 clarification on my part is what I had wrote in the objection,  
2 so we would ask that that be included in there, that it was  
3 never made part of the pledge instrument, to make it clear.

4 THE COURT: I'm going to deny that.

5 Certainly, the Fifth Circuit has the record of the  
6 trial and can determine that if it determines that's important.  
7 It's not going to affect our calculation nor do I the think  
8 Bureau of Prisons is going to need any of that.

9 MR. HANSHEW: But it's a correct statement of the  
10 scenario, that's why we're asking for it to be put there,  
11 because you heard the argument from the government right now,  
12 which is, you know, they're trying to argue that implicitly or  
13 inferred or somehow or another that that was -- became part of  
14 this pledge agreement and that's not true. The pledge  
15 agreement is a specific document, a contractual document.

16 THE COURT: And I think the trial was clear that the  
17 important part of that letter was that it cleared the way for  
18 the pledge agreement. And whether it's attached to it or not,  
19 I don't think really makes any deference. It's the impact that  
20 it had on the minds of people that then executed a pledge  
21 agreement.

22 So I think we're on 22. I'm going to overrule those  
23 objections.

24 23. So he's just arguing that the power of attorney  
25 gave him the power to do these things, so I'm overruling that.

1 Do you have any other evidence you want to admit on objection  
2 23?

3 MR. HANSHEW: As I mentioned earlier, the documents  
4 themselves specify the authority granted, and we believe it's  
5 consistent with our statement here, Judge.

6 THE COURT: Okay.

7 24. It's kind of the same thing. I'm going to  
8 overrule the objection. Although it is true that he was to  
9 receive, at least somewhere I saw, and I don't know if it was a  
10 trial or before trial or where, but I did see a contract that  
11 indicated that Mr. Delgado would get 63 percent of the profits  
12 or 65 percent of the profits.

13 MR. HANSHEW: That's correct.

14 THE COURT: So that part, I'm not overruling that. I  
15 think that is true.

16 As to 25? Objection and denies information --  
17 (reading) -- defendant claims that Gireud and/or Miller  
18 attempted to and sold the L.T.S.A. without any authority --  
19 paragraph 83.

20 What's the new number for paragraph 83, Mr. Luevano?

21 PROBATION OFFICER LUEVANO: One moment, Your Honor.

22 THE COURT: I'm sorry?

23 PROBATION OFFICER LUEVANO: One moment.

24 THE COURT: It's the paragraph about I guess the --  
25 where Mitsubishi backed out of the servicing agreement and

1 they -- and they got there competitor Sulzer to agree to do it.  
2 Maybe it's 82.

3 MR. HANSHEW: I believe it's 82, Judge.

4 THE COURT: Is it 82?

5 MR. HANSHEW: Correct, Judge.

6 THE COURT: Okay. So then, (Reading) it is -- denies  
7 information contained therein.

8 PROBATION OFFICER LUEVANO: What was your question  
9 again, Your Honor?

10 THE COURT: 82, that information, did that come from  
11 the trial? I can't remember if that came out at the trial or  
12 that's --

13 PROBATION OFFICER LUEVANO: No, Your Honor, that's --  
14 according to documents here we have from investigative reports  
15 are from what I have here.

16 THE COURT: And whose reports are those?

17 PROBATION OFFICER LUEVANO: The case agent, Your  
18 Honor?

19 THE COURT: The lady case agent? Am I getting my  
20 trials confused? Yes, I am.

21 MR. HANSHEW: I think it was two males.

22 THE COURT: Yeah. I don't remember if we heard from a  
23 case agent, but maybe we did.

24 MR. HANSHEW: We just heard from one at the outset,  
25 where he put up the chart of the payment distributions.

1 Nothing about this, the background, because the lead case agent  
2 they didn't put on.

3 MS. KANOF: You said the lead case agent --

4 MR. HANSHEW: It wasn't the lead, right? That's  
5 correct, right?

6 MS. ARREOLA: The lead case agent was transferred to a  
7 different district, Your Honor, and came back and sat through  
8 the trial. A new local agent was assigned to the case and  
9 Brian Cunningham was put on. The original case agent was  
10 not --

11 THE COURT: Oh, it was Cunningham? That's who?

12 MS. ARREOLA: Brian Cunningham was the new case agent,  
13 the local case agent.

14 MR. HANSHEW: He started the trial. The first  
15 witness, Judge, they put up the demonstrative board, the  
16 transactions and then they had a box of documents they  
17 introduced, but that was essentially the totality of his  
18 testimony.

19 THE COURT: So that box of documents, was that that,  
20 that Mr. Luevano has?

21 MR. HANSHEW: No. They have a box of R.O.I.s. that's  
22 the problem why we keep objecting to all of this, is a lot of  
23 this information comes from the agent sitting down with  
24 probation and/or handing over R.O.I.s, no trial testimony.

25 THE COURT: So how am I supposed to do this?

1 MR. HANSHEW: Strike them all.

2 MS. KANOF: Your Honor, I guess I'm getting kind of  
3 lost. Are we talking about objection 24 or 25?

4 THE COURT: 25. And it's 82, now. It's 82.

5 MS. KANOF: Okay. Because I have objection 25 as to  
6 paragraph 83.

7 THE COURT: Well, it used to be 83, because he made  
8 these objections under the old --

9 MS. KANOF: Oh, okay. So we're talking about a  
10 paragraph, 50, begins: According to Gireud, Mitsubishi and  
11 Sulzer Corporation --

12 THE COURT: I think so.

13 MS. KANOF: -- file lawsuits?

14 THE COURT: That's what I'm talking about. I think  
15 that's what we're talking about, but I'm not positive.

16 But Mr. Hanshaw --

17 MR. HANSHEW: I agree.

18 THE COURT: -- that's the one you had the objection  
19 to, right?

20 MR. HANSHEW: Correct, Judge.

21 MS. KANOF: I don't think it needs to be -- Your  
22 Honor, I don't think that paragraph even needs to be in the  
23 presentence report. I don't think it has anything to do with  
24 the trial.

25 THE COURT: All right. So let's take that out.



1 That's what Mr. Hanshew wants.

2 So then 26.

3 MS. ARREOLA: Your Honor, I apologize for asking the  
4 Court to take a step back to objection number 24 to paragraph  
5 82. Did the Court sustain the objection as to the entire  
6 objection or just the last sentence?

7 THE COURT: No. The only part I'm not sustaining an  
8 objection to is that Mr. Delgado was to receive the majority of  
9 the profits, a large majority of the profits.

10 MS. ARREOLA: Okay. Thank you, Judge.

11 THE COURT: And then the last one is 84. And is this  
12 another one of those -- is it now 83, Mr. Luevano?

13 PROBATION OFFICER LUEVANO: That's correct, Your  
14 Honor.

15 THE COURT: There's a lot of information in there.  
16 Where did that come from? Is that from the trial?

17 MR. HANSHEW: R.O.I.s, Judge.

18 THE COURT: R.O.I.s also?

19 MS. KANOF: We need to find --

20 MR. HANSHEW: It even starts out saying, on separate  
21 occasions in November 2012, agents reinterviewed Gireud --

22 THE COURT: Oh.

23 MR. HANSHEW: -- and provided the following.

24 THE COURT: Do we need any of that for anything? Is  
25 the government wanting to prove up any of that? Is that

1 important to have it in here?

2 MS. KANOF: It looks like it's from the interview of  
3 Gireud.

4 PROBATION OFFICER LUEVANO: It is.

5 MS. KANOF: It is?

6 From an R.O.I. interview of the witness Gireud. I  
7 think he testified to a lot of it, but a lot of it is totally  
8 irrelevant, especially with regard to the Sulzer information  
9 starting on --

10 THE COURT: Well --

11 MS. KANOF: Yeah, that --

12 THE COURT: So are we going to have to go paragraph by  
13 paragraph?

14 MS. KANOF: No.

15 THE COURT: Do we just strike the whole thing or...

16 MS. KANOF: I think we can just strike the whole  
17 thing.

18 First of all, I would tell the Court that Gireud did  
19 testify to a lot of this, but also a lot of it came into  
20 evidence through the actual documents that Gireud is talking  
21 about. So I do think it's unnecessary. It's a reiteration.

22 To the extent that it's pertinent, it's reiteration of  
23 other parts of the presentence report and the rest of it is  
24 irrelevant, so I have no objection to striking the entire  
25 thing.

1 THE COURT: Okay. So we'll strike what is now  
2 paragraph 83, pursuant to objection number 26 as to paragraph  
3 84. Okay.

4 In the future, because hearsay is admissible for  
5 purposes of these hearings, right, you could attach, I suppose,  
6 those R.O.I.s or whatever they are, at least I would be able to  
7 see them because otherwise I, you know, all I have is the trial  
8 testimony.

9 PROBATION OFFICER LUEVANO: Sure. We'll do that, Your  
10 Honor.

11 THE COURT: So those are the objections.

12 So with those corrections, then, I will adopt the  
13 report.

14 So now, allocution.

15 MR. HANSHEW: Thank you, Judge, if I may.

16 And I'll preface this, Judge, as every judge in trial  
17 knows that allocution after a jury trial where obviously you  
18 are preserving your record for purposes of appeal, can be a  
19 difficult task.

20 You know, Mr. Delgado, we've spoken at length about,  
21 you know, he's not going to allocute today based simply on the  
22 fact he can preserve his records.

23 THE COURT: Well, you know, I see in civil cases all  
24 the time, lawyers have -- because the discovery has gotten so  
25 burdensome, they have this cover order that says if we

1 accidentally disclose something that we shouldn't be, are we  
2 going to pretend like it never happen and we're not giving up  
3 any rights and you know those sort of things. Why? We should  
4 have a rule like that so that people can say what they want to  
5 say and yet not waive their error by making admissions that are  
6 going to count against them.

7 MR. HANSHEW: Unfortunately, we live in the Fifth  
8 Circuit, and they take a harsher view to any types of  
9 admission, statements, et cetera, so we have to follow the  
10 safest side of things with that.

11 I agree with the Court. It seems perfectly reasonable  
12 and legitimate that somebody should be able to get up here and  
13 talk about their life and their case and what happened and not  
14 be, you know, held responsible for that. But I mean this is  
15 the same, the Fifth Circuit, that makes you do the *Pelletier*  
16 objection, after we've already filed a 30-page brief, and we  
17 have to -- you make your ruling and then we have to still say  
18 it or else we waive it. I mean, this is kind of ridiculousness  
19 that they forced us into. But I appreciate the Court's  
20 comments and I personally agree.

21 So in terms of this case and Mr. Delgado I hope the  
22 Court saw the letters from his family and friends.

23 THE COURT: I did. It had his son and...

24 MR. HANSHEW: Right. And you were able to see a more  
25 human side of Mr. Delgado, the one that, you know, I've spent

1 now years in speaking with, dealing with, talking to his  
2 family, obviously, hours upon hours with Mr. Delgado.

3           You know, what I glean from that, from my experience  
4 and hopefully the letters reflect that is that you know there's  
5 a person that had a wonderfully positive influence on the  
6 people around him. And obviously there'll be, you know,  
7 detractors, and we heard some of those at trial about, you  
8 know, where they had a very negative experience with their  
9 dealings with Mr. Delgado and for various reasons.

10           You saw that he helped raise a family, very  
11 successful. You know he has the son going off to Harvard Law  
12 School. He's instilled in them the importance of where they  
13 come from, their foundation, how they got to where they were,  
14 hard work. And it's reflected in the results in their lives  
15 and their sentiments.

16           I thought their letters were also very truthful in the  
17 duality of all humans, but of what they knew in this case,  
18 which is Mr. Delgado, is that it -- you know it wasn't letters  
19 saying, oh, you know, poor mijo. He's like the most perfect  
20 angel you've ever seen in your life and, you know, he never did  
21 anything wrong and that type of thing. They have a normal  
22 human experience with him, the ups and downs, and they  
23 acknowledge that. But they still pointed out the same thing as  
24 I've seen is that, you know, he does have a care for community.

25           You know, he was a benefactor here for in El Paso for

1 various charities throughout his time. I know, and the  
2 government will of course cast dispersion on some of it because  
3 he, you know, was at Carnegie Melon and he gave a significant  
4 endowment to them and, you know, they'll claim that that comes  
5 from this or any other case. But there's a lot of parts of it  
6 that had noting to do with M.V.s and there's no disputing that,  
7 Judge.

8 Moving more into this case. And you know I've always  
9 believed, and I still do believe after, you know, the years of  
10 looking at this case and the trial that -- you know, this was a  
11 business transaction. This was a business transaction amongst  
12 very sophisticated businessmen, and the least of which was  
13 frankly Mr. Delgado.

14 You know, I spoke earlier in a different context about  
15 these behemoths. I mean, you have the C.F.E. and you have  
16 Mitsubishi, albeit, you know, one of their sub-shell companies  
17 in Mitsubishi America, but it's a global powerhouse. They have  
18 teams of lawyers. Some are sitting here today. They sat  
19 through this trial. They had teams of business folks, some of  
20 which testified, others which you saw were involved. They had  
21 accountants. They had individuals that went and looked at the  
22 documents and the records and the accounting in the business  
23 cases from start to end. And they -- many people along that  
24 path signed off on this.

25 You know, I mean there was a mention earlier about,

1     you know, C.F.E. was -- they didn't worry about the interest,  
2     and so they, you know, oh, the shot off a \$32-million check.  
3     No. They got documents. And then they responded accordingly;  
4     they accepted those, they certified them, they paid this.

5             So, you know, the notion to me that Mr. Delgado in  
6     this case is some incredible fraudster, that he perpetrated  
7     this you know fraud against these two players. I mean these  
8     guys, that's their business. C.F.E. and Mitsubishi, that is  
9     what they do. They make that energy and provide it to their  
10    country, and to do that they have to buy these turbines among  
11    other mention. Mitsubishi manufacturers per month and sells  
12    them around the globe.

13            And you had a, you know, a perfect storm in this case,  
14    which you had Mitsubishi, who had no contacts prior -- with  
15    C.F.E., Mitsubishi America, prior to this. They had a  
16    mothballed turbine that was originally produced for some entity  
17    in Brazil, we heard, that had been sitting around for, you  
18    know, who knows how long, and they were more than excited to,  
19    one, have a business entrée into Mexico because it's a  
20    powerhouse. It's not only that. It's a monopoly in terms of  
21    it -- at that time -- now I know that those -- undone some of  
22    this -- but at that time, the C.F.E. was a monopoly that's run  
23    by the government. And so, you know, any  
24    energy-equipment-producing company in their right mind would  
25    want to get in on a country that, you know, has these types of

1 government-run energy companies.

2 And C.F.E. had the need for a turbine. And they knew  
3 they could get a good deal, because they were finding out it's  
4 gray marketed in mothballs. And the person that had the  
5 connections to make that, and the only person that made this  
6 happen, was Mr. Delgado, largely. And so he, you know,  
7 brokered this deal.

8 You know, obviously it's been our position and, you  
9 know, I know the jury ruled otherwise in terms of the frauds  
10 they were presented, okay, the frauds they were presented,  
11 about it, but this deal was ultimately consummated with those  
12 two behemoths. They had their deal. They got their equipment.  
13 They got their money. They even got their long term service  
14 agreement that they weren't going to get before this. It is a  
15 classic business deal, contract deal that's gone wrong.

16 I mean, I know this Court has been, you know, a judge  
17 for many years in state and federal court and you see this. I  
18 mean this is what happens and, you know, businesses get in  
19 contract disputes, especially supply contracts and such. This  
20 is part of the normal course of business. And that's what  
21 happens here. And it happens not just in Travis County, in  
22 Mexico. I believe Sulzer had a lawsuit against the various  
23 parts. And they're not all, to be clear about this, they're  
24 not all suing Mr. Delgado. They're all suing each other.

25 You even saw in the settlement agreement between



1 C.F.E. and Mitsubishi that they expressly each preserved their  
2 claim about what happened in this deal. And C.F.E., for  
3 example, didn't give up its claim that all of this contract,  
4 the transactions, the pledge in this were legitimate, to this  
5 day.

6 In that document, that last document you have, they  
7 don't give out and Mitsubishi, you know, they countered to  
8 that. That litigation goes on in these other jurisdictions.  
9 Mexico had various -- I believe they had administrative  
10 proceedings, possibly criminal ones, civil proceedings. They  
11 go on about this. And frankly, you know, it's my position, our  
12 position. That's where, you know, they should have all been.  
13 But you know they found a strong hand of the U.S. Federal  
14 Government and it's a money grab. You know, this case is a  
15 money grab.

16 You've got the easiest way for them to collect is to  
17 have, you know, a federal judge impose, you know, 25-million or  
18 \$1.3-billion in, you know, restitution and such, so they can  
19 get that federal court judgment and runaround with that and  
20 collect.

21 THE COURT: Collect from where?

22 MR. HANSHEW: I'm sorry? From the restitution, for  
23 example, in this case they're asking for. It's all the same  
24 claims they've made in all of these other civil proceedings.

25 And I say all of that to get to where -- an

1 appropriate, you know, sentence in this case, which is the  
2 notion that what Mr. Delgado did in this fraud case. I mean,  
3 this is distinctly different, let's say, for example, you now,  
4 a Ponzi scheme, where you see somebody comes in and they've  
5 stolen, you know, every grandma and grandpa and every other  
6 poor person's life savings and to put something against their  
7 homes. I mean, the list goes on. You've seen and we've all  
8 heard of these cases where individuals come in and they, you  
9 know, through a Ponzi or some other scheme, they destroyed, you  
10 know, these individual persons' lives. This couldn't be  
11 farther away from that.

12 And you know, of course, the argument will be, well,  
13 you know, corporations are people too, you know, and that  
14 debate goes on in our country, and they have a right to come  
15 here, I'm not disputing, and make their claims about it. But  
16 to really look at what's in the factors of 3553 for this case  
17 for Mr. Delgado, I mean, the danger he is to the public, the  
18 injury he caused in this case, he already has a sentence of,  
19 you know, 16 years, Judge, in the other case. You know, we're  
20 asking the Court to consider a significant variance in this  
21 case.

22 You know, the idea that I think with the new guideline  
23 that the Court came up with, 121 to 151, and in the others it's  
24 capped at 10 years, I mean, a 10-year sentence for what was  
25 nothing more than, you know, a business transaction gone wrong,

1 is incredibly excessive, Judge. I think that the Court can  
2 fashion a sentence much lower than that, that accounts for all  
3 of the factors in 3553 and what actually did happen here and  
4 what didn't happen here.

5 We'd also ask the Court to run this sentence  
6 concurrent with the sentence in the other case. You know, the  
7 notion that stacking onto Mr. Delgado's 16-year sentence, a  
8 ten-plus-year sentence, I mean, this is an individual in his  
9 50s. As it is, he's going to, you know, at best get out in his  
10 mid 60s. You know, we know by fact by the sentencing  
11 commission, you know, recidivism rates drop as people get  
12 older. I mean, he's going to spend a decade already  
13 incarcerated. There is no penological interest. There's no  
14 3553 factor that supports a consecutive sentence here.

15 And really the only reason why, you know, the  
16 government is going to be -- if they are -- if they've  
17 threatened, asking for a consecutive sentence is because he  
18 exercised his right to a trial in this case. But for that,  
19 they wouldn't be sitting here saying that and we all know that.

20 So I ask the Court to consider all of that. And if it  
21 has any other areas of concern you'd like me to address, Judge,  
22 I can.

23 THE COURT: All right. Thank you, Mr. Hanshew.

24 Mr. Delgado, is there something you want to address to  
25 the Court pip know your attorney for the reasons you may not

1 want to but I need to give you the opportunity if you do.

2 THE DEFENDANT: Just thank Mr. Hanshew and Maureen  
3 Franco.

4 THE COURT: All right. Thank you.

5 Ms. Kanof?

6 MS. KANOF: Yes, Your Honor.

7 This is definitely not a classic business deal and  
8 this is not a business deal gone bad.

9 MR. HANSHEW: Do you want us to move over, Judge?

10 THE COURT: Sure. You can go ahead and have your  
11 seat.

12 MS. KANOF: F.G.G. should never have gotten this  
13 contract, should never have gotten permission to bid for it.  
14 They had no assets.

15 If the Court will remember the testimony, generally,  
16 in order to bid for this what was ultimately more than  
17 \$200-million contract, including the L.T.S.A., you had to have  
18 at least 10 years business expenses and you had to be vetted.

19 There were usually -- this was very unusual deal that  
20 somebody actually came in between.

21 Mr. Delgado shut out Mitsubishi and didn't let them  
22 see anything. Mr. Delgado shut out Mr. Gireud. He found a  
23 dupe, Mr. Gireud, to create a company that he created in  
24 Nevada, to use in order to steal money, go on lavish vacations,  
25 buy a ski resort, buy a house in El Paso, spend over \$70,000 at

1 Charlotte's and live the life of Riley. And he has no money  
2 now, because he spent is all having a real good time.

3 This was not a classic business deal gone wrong,  
4 because F.G.G. should never have gotten this contract. Look  
5 who they were bidding against: Westinghouse, Siemens; some of  
6 the largest energy providing corporations in the world. How  
7 does it happen that F.G.G., a little nobody in El Paso, who had  
8 to open an account at Wells Fargo, a little branch, would get  
9 that contract. There was nothing classic. There was not a  
10 business deal.

11 Mitsubishi had these old -- not that old -- but they  
12 had these generators that were built for Brazil. And Brazil,  
13 it went under, and they were sitting there. And this middleman  
14 in Houston, who some of these people knew, put the two of them  
15 together. A businessman would say, yeah, let's get rid of this  
16 equipment.

17 But this is really not a complex case. It's really  
18 pretty simple. Somebody was in cahoots with Mr. Delgado or  
19 somebodies were in cahoots with Mr. Delgado.

20 Remember that Mr. Gireud had to sit outside the office  
21 of a labor union leader, who had an awful lot of power. And I  
22 know that this Court did not hear the testimony where  
23 Mr. Delgado was convicted of conspiracy to launder \$600-million  
24 for the Milenio cartel, but that same individual came up in  
25 that case as well. This case is just about plain old fraud,

1 fraudulent signatures, fraudulent documents, fraudulent names,  
2 fraudulent contracts; all of them pointing to Mr. Delgado.  
3 There was -- it just a plain, simple individual.

4 Throughout the government's dealings with Mr. Delgado  
5 in both cases, and they were not originally mine or  
6 Ms. Arreola's, but the cases began with an AUSA that left our  
7 office, and were already charged, when they were turned over.

8 There're attorneys -- four attorneys asked for  
9 Mr. Delgado to be evaluated. And one of the problems with our  
10 judicial system is that there are only two psychological  
11 situations in which an individual can avoid trial; one, is that  
12 they're insane. Mr. Delgado is clearly not insane. He knows  
13 what he did was wrong at the time that he did it. And  
14 Mr. Delgado was certainly competent. He knows the law very  
15 well. But there's something in between there that somebody can  
16 falsify documents.

17 In the first case, he falsified legal documents to try  
18 to justify over a million dollars in cash, that his partner in  
19 crime, an informant who turned, had with him, he falsified some  
20 false settlement papers to try to justify the cash.

21 He falsified an e-mail that purported to be from an  
22 agent from Homeland Security that came from Atlanta, but some  
23 computer expert, forensic experts, detected that the e-mail  
24 actually came from a cyber cafe in El Paso.

25 Here he falsified letters from Mr. Adams that said

1 that he could pledge equipment that everybody in the whole  
2 world knew he could not pledge, and that Mr. Adams himself just  
3 days before had said, are you sure you're not pledging this  
4 equipment? This is just a pretty simple fraud case from a very  
5 smart man, who is neither insane nor competent, but certainly  
6 is diabolical.

7 Is he fit, under the 3553 characteristics, to get  
8 leniency in this case? Well, maybe, there's not sympathy for  
9 corporations, although when corporations are defrauded, it  
10 usually ends up hurting the purchasers of their products, the  
11 end user, but there were a lot of victims in this case.  
12 Whether or not you have sympathy for some of the individuals  
13 that were tied up with him or not is not the question, but he  
14 used people like his former fiancée. She was very damaged by  
15 his conduct.

16 He used people like his former accountant. You know,  
17 she waited and waited at that bank for him to come and put his  
18 signature on it -- on that account and it never happen, and she  
19 was terrified that she was going to be libel for that money.  
20 Where was all of this money coming from, from this offshore  
21 account. She knew nothing about it, and finally became  
22 concerned that she was going to be charged with money  
23 laundering and went to an attorney, which is how we got the  
24 case, someone that she was calling her son betrayed her. His  
25 own family are his victims.

1           One of the things that happens in white collar crime  
2           that's so insidious is that they convince their family that  
3           they did nothing wrong, and they have a whole bunch of people  
4           that hate the government for the rest of their lives and teach  
5           the families that the government is evil, because they were  
6           innocently convicted.

7           If Mr. Delgado is concurrently serving his time, I  
8           guess, he's already been in prison or in jail five years; he  
9           gets time for that; he could be out as early as six or  
10          seven years if it's concurrent or seven or eight. And I  
11          promise the Court he'll find somebody else to cheat. And the  
12          government does ask the Court to realize that no matter how  
13          much money he funneled, he squandered it. He bought expensive  
14          things and toys and very expensive clothes. You'll remember,  
15          he buys clothes from Ft. Worth from a man, who kept telling his  
16          accountant "where's my money, where's my money?" And the pool  
17          guy, "where's my money, where's my money?" She ended up using  
18          her credit card to pay for his hotel in Italy.

19          This isn't a classic or common business deal. This  
20          was a horrible fraud and had a lot of victims, and the  
21          government is going to ask the Court to stack his sentence,  
22          because if he gets out while he still has the ability, he's  
23          going to cheat a lot more people.

24                 THE COURT: All right.

25                 And you said you had some victims that wanted to make



1 a victim impact statement prior to sentencing.

2 MS. KANOF: Yes, Your Honor. Who wants to go first?

3 Your Honor, this is Mr. Mark Maney. He represents  
4 Comisión Federal de Electricidad.

5 THE COURT: Good morning, Mr. Maney.

6 MARK MANEY VICTIM IMPACT STATEMENT

7 MR. MANEY: Good morning, Your Honor. I have the  
8 honor of representing the Mexican governmental entity Comisión  
9 Federal de Electricidad usually called the C.F.E.

10 During this relevant time, the C.F.E. was the only  
11 provider of electricity in Mexico. It was not a corporation.  
12 It did not do it for profit. It did it in part of the public  
13 trust. As a governmental entity, all of C.F.E.'s property,  
14 including this money, is sovereign property of Mexico.  
15 C.F.E.'s officials are government officials.

16 It is C.F.E.'s position and Mexico's position that  
17 C.F.E. was the direct victim of Delgado's crimes. Frankly, the  
18 words of Willie Sutton the famous bank robber, "that's because  
19 that's where the money was." It was C.F.E.'s money that was  
20 going to fund the scheme. To get C.F.E.'s money, Delgado had  
21 to defraud C.F.E., chiefly through a -- let me make sure I get  
22 the date right -- March 3rd letter, where he told C.F.E. that  
23 the account was shifted from El Paso to the Turks and Caicos  
24 and any and all proper approvals had F.G.G.'s attorney to do  
25 that. That allowed him to divert \$32-million of C.F.E.'s money

1 to an offshore bank account.

2 Now, keep the scheme going, as the Court noted  
3 earlier, he sent \$18-million of that money to Mitsubishi where  
4 it was supposed to go, which was less than Mitsubishi was owed,  
5 and he defrauded them and told them the payments were lower,  
6 but they got \$18-million, which means 13-million-987 --  
7 78-thousand-97-dollars of C.F.E.'s money were diverted from  
8 where they were supposed to go. They were supposed to go for a  
9 number of things, mainly to Mitsubishi; they went to Mr.  
10 Delgado. He used that money, C.F.E.'s money, Mexico's money,  
11 to buy a house, ski condos, really nice furnishings, three  
12 cars, vacations, et cetera. All of that property traces  
13 directly to the sovereign patrimony of Mexico and Mexico wants  
14 it back.

15 Now, I recognize there are other victims here.  
16 Mitsubishi would have made a lot more money if the deal went  
17 through. F.G.G.'s owners certainly loss money. Lots of people  
18 in Mexico pay for electricity, but the property is Mexico's.

19 I also want to note that Mexico's losses were far  
20 greater than \$14-million. In addition to \$14-million, C.F.E.  
21 spend an extra \$9-million just for the turbines, for extending  
22 guarantees, the warranties because of the delays in getting  
23 those, et cetera. They spent and extra 90 --

24 THE COURT: Hold on a second.

25 Their original contract was 120-million for the

1 turbines.

2 MR. MANEY: And they ended up sending 129.

3 THE COURT: No, no. For the turbines?

4 MR. MANEY: For the turbines and all of the  
5 accoutrements of the turbines.

6 THE COURT: So C.F.E. paid Mitsubishi 129-million for  
7 the turbines?

8 MR. MANEY: Yes.

9 THE COURT: Oh, okay. Because this is really news to  
10 me.

11 MR. MANEY: Yes, they paid them 9- -- now it wasn't --  
12 it was turbines plus you had Mitsubishi -- you know, because  
13 there was a three-year delay, the warranties and the originals  
14 were out and they had to pay extra for that.

15 THE COURT: Okay. So you're saying that C.F.E. paid  
16 cash money to Mitsubishi of 129-million.

17 MR. MANEY: Yes, that was the last price of the  
18 turbines themselves.

19 THE COURT: Okay. Because I have a letter from  
20 Mitsubishi saying that they only paid, I don't know,  
21 67-million; that's not true?

22 MR. MANEY: Your Honor, I'm combining the cross of the  
23 turbines and the warranties and extended warranties --

24 THE COURT: We're just talking about the turbines.

25 MR. MANEY: -- not the service agreement.

1 THE COURT: I asked you about the turbines, not the  
2 service agreement. You're saying you paid --

3 (Counsel interrupts the Court.)

4 MR. MANEY: No, no, no. I'm not talking about the  
5 service agreement.

6 THE COURT: I'm not either.

7 MR. MANEY: Okay.

8 THE COURT: I'm just talking about turbines, the  
9 machines, that physical structure that generates electricity;  
10 your saying C.F.E. paid Mitsubishi \$129-million.

11 MR. MANEY: Yes. But what I am trying to clarify and  
12 the reason there might be a discrepancy between us and  
13 Mitsubishi is, is that I included or at least C.F.E. includes  
14 in the cost of the turbines apart from the service agreement --

15 THE COURT: I'm just talking about the cost for the  
16 machine, 129 --

17 (Counsel interrupts the Court.)

18 MR. MANEY: It was one contract, Your Honor, and it  
19 includes some warranties, includes some deicing, et cetera. I  
20 don't know how that breaks down --

21 THE COURT: You can make it as complicated as you want  
22 or as easy as you want. Here is the question: For the  
23 physical machine that you push the on button and out comes the  
24 electricity, the turbine, two diesels, one steam, how much did  
25 C.F.E. pay Mitsubishi?

1           MR. MANEY: I don't know the break down in the  
2 contract. What I will say is the original -- what we purchased  
3 in the original \$120-million contract, ultimately crossed  
4 \$129-million.

5           THE COURT: All you purchased in the \$120-million  
6 contract was the physical machine that generated the  
7 electricity.

8           MR. MANEY: I -- I --

9           THE COURT: So if you paid Mitsubishi 129-million,  
10 we'll speak to Mitsubishi in a minute. We'll find out what's  
11 going on.

12           MR. MANEY: But I do believe included -- Your Honor,  
13 is incorrect that it was just the machines, because it was the  
14 machines, the warranties for the machines and --

15           THE COURT: It may have included all of that, but then  
16 they had another \$121-million service agreement.

17           MR. MANEY: That did not change.

18           THE COURT: Okay.

19           MR. MANEY: That's not what --

20           THE COURT: That's not what I'm talking --

21           (Counsel interrupts the Court.)

22           MR. MANEY: (Indiscernible.)

23           THE COURT: -- just the machine, you, C.F.E., paid  
24 Mitsubishi \$129-million.

25           MR. MANEY: Yes, but it -- you know, that included

1 transportation, all -- everything to get the machines in, apart  
2 from the service contract, went up \$9-million.

3 THE COURT: Okay.

4 MR. MANEY: All right.

5 They spend an extra -- C.F.E. spends an extra  
6 \$90-million to complete the power plant. If the power plant  
7 was designed for these turbines, when the turbines didn't show,  
8 they couldn't finish the project, all the delays, so an extra  
9 \$90-million just to finish the facility.

10 Finally --

11 THE COURT: Did you have to get other turbines or were  
12 you still --

13 MR. MANEY: We -- well, they could've spent  
14 \$250-million to adjust the power plant to set different  
15 turbines, so I mean it was a bad decision versus bad decision.

16 THE COURT: Okay. So that really was an additional  
17 cost, because you were still planning to get those turbines,  
18 the very same ones.

19 MR. MANEY: If the turbines had come when planned, and  
20 this -- in the design, the cost of the building finishing the  
21 plant would have been \$90-million less. They were 90-million  
22 over budget, because they didn't get the turbines anywhere near  
23 in time.

24 THE COURT: So was this a function of time that  
25 increased the price?

1           MR. MANEY: Yes. They had to maintain the facility  
2 that wasn't operating. They had to keep workers out there.  
3 And then they had to bring -- and then they didn't have  
4 deicing, which they were supposed to have. They were told  
5 deicing, but then Mitsubishi said, no, there isn't deicing, so  
6 we had to put the deicing in, and all of those things was an  
7 extra \$90-million. And this was all --

8           THE COURT: So C.F.E. put in the deicing?

9           MR. MANEY: Well, Mitsubishi did, but they paid for  
10 it.

11          THE COURT: Okay. All right.

12          MR. MANEY: And then the La Auditoría Superior de la  
13 Federación in Mexico, the national auditing firm, did an audit  
14 of the cost of this and determined that the delay, the  
15 three-year delay in getting the turbines, cost the C.F.E.  
16 \$432-million a year. That works out to about \$300.00 a year  
17 per family in Mexico. And for some of those people that's a  
18 lot of money. And all of that was passed through, but it was a  
19 big burden. So the official estimate and the estimate that got  
20 four officials of C.F.E. disbarred ten years from ever working  
21 for the government, is a \$1.3-billion number. And all of those  
22 numbers I gave you are part of the official audit of the  
23 government of Mexico; not C.F.E.'s number, a separate entity.

24           This obviously -- and all of this was both testified  
25 by Mr. Matamala, including the 1.3-billion, and is in his

1 declaration. This was obviously, was and is a huge problem for  
2 the Mexican government.

3 Mexico charged through what they called a comptroller,  
4 which is their public function, secretary of public function.  
5 A number of C.F.E. officials, eventually, four high level  
6 officials were disbarred from any government office for  
7 ten years. Four other officials, including one who came to  
8 testified, but didn't testify because the appeal came out right  
9 before, lost their jobs for six months, including all pay and  
10 seniority benefits, which is essentially a career killer, not  
11 to mention a six month loss in time, all for not stopping him,  
12 Mr. Delgado, from stealing this money.

13 Since this trial, in March of this year, a C.F.E.  
14 official, who was above those eight, was sentenced to prison  
15 for corruption; not for this case, but the suspicion was that  
16 he was somehow involved in this fiasco as well. And notably on  
17 numerous occasions I talked to Mr. Hanshew, and tried to get on  
18 behalf of the Mexican government, Mr. Delgado's cooperation to  
19 uncover any corruption with the C.F.E., working on behalf of  
20 the P.T.R. and comptroller's office. I got nowhere in those  
21 efforts despite promises that we would be coming here at this  
22 time asking for leniency as opposed to what we are doing right  
23 now.

24 I was retained to try to get that cooperation and to  
25 try to get justice, but mostly to get the money back, because



1 for political reasons, this is the sovereign property of Mexico  
2 and they want to back.

3 Now, there is a contract which you've seen with  
4 Mitsubishi. And if we get back any money, if the C.F.E. does,  
5 as government properties, there are contractual provisions that  
6 have been amended so many times about that high (motioning),  
7 that would give them some credits and offsets. We're not  
8 obviously trying to hide that from Mitsubishi. They're sitting  
9 there right with us. But our position is, is that all of this  
10 money is constructive trust money, sovereign property of  
11 Mexico. And Mexico, like the United States, doesn't abandon  
12 their property, can't lose their property, can't assign away  
13 their rights. So, for example, when I have a contingency  
14 fee for C.F.E., not this case, but other cases, I can't get  
15 assignment of their claim. I get a right to get payment, a  
16 percentage of what's won, but they're separate. They just  
17 can't give me that. This is C.F.E.'s money. They want it  
18 back.

19 So therefore, the C.F.E. did not file suit against  
20 Mr. Delgado, because this is political and sovereign property,  
21 the Mexican government sent an official request to the United  
22 States Government from the C.F.E. to the P.G.R.,  
23 (indiscernible) -- state department, to the DOJ, asking for  
24 assistance to get their property back. That formal request was  
25 granted and the U.S. Government assured C.F.E. that all would

1 be done within the law to get their property back.

2 And frankly, I can tell you that so far that's been  
3 wonderful. Ms. Kanof, Ms. Arreola, every one in the United  
4 States Attorney's office has obviously done a fantastic job in  
5 pursuing this case.

6 C.F.E.'s also cooperated. We gathered documents. I  
7 travel to El Paso with witnesses, write video conferences with  
8 other witnesses, brought two witnesses to trial; one who  
9 testified, Juan Pablo Matamala; Francisco Moreno did not,  
10 because the appeal -- lengthy, lengthy appellate decision  
11 confirming his suspension for six months came out right before  
12 trial. I was here every day for trial. And I'm here today for  
13 the sort of the last part to see if Mexico gets justice in this  
14 case.

15 I appreciate the Court's time, but this was not a  
16 victimless crime. The C.F.E. didn't just lose profit. They  
17 cost real people real money and some good people their jobs  
18 because this happened.

19 Thank you.

20 THE COURT: Thank you.

21 MS. KANOF: Your Honor, for representing Mitsubishi,  
22 Mr. Matthew Herrington from Steptoe and Johnson, Washington  
23 D.C.

24 MR. HANSHEW: Judge, I just want to clarify for  
25 purposes of -- these are victim's statements. This is not --

1 THE COURT: Right. I know. I know. But they're  
2 interesting statements. And I understand these are just victim  
3 impact statements and we're going to have a restitution hearing  
4 after.

5 MR. HANSHEW: The Court is not going to consider any  
6 of these statements for restitution purposes, correct? Because  
7 we don't have -- subject to cross-examination. They're not  
8 testifying.

9 THE COURT: No, no. It's just giving me a lot of  
10 ideas for questions I might ask at the restitution hearing.

11 MR. HANSHEW: I just want to make sure, because if it  
12 is, I object that any of this information be used for purposes  
13 of restitution.

14 THE COURT: No. I understand where we're at; victim  
15 impact statement.

16 MR. HANSHEW: Thank you.

17 MATTHEW HERRINGTON,

18 MR. HERRINGTON: Your Honor, Matt Herrington for the  
19 firm that's now known as Mitsubishi Hitachi Power Systems  
20 America, but I usually refer to it as M.P.S.A., which is the  
21 corporate moniker. It went under at the time when it had the  
22 unfortunate experience of going into business with Mr. Delgado.

23 I want to start by answering a question that came up  
24 in your colloquy and I will direct you to the declaration of  
25 Kevin Beddard, who sat in that witness stand, his affidavit,

1 actually which is attached to my statement that went to the  
2 probation office, discusses in paragraph eight the discrepancy  
3 here.

4 You know when something is wrong in this case, you  
5 know what it bottoms out to? It bottoms out to a lie by Marco  
6 Delgado.

7 THE COURT: Hold on. Where are we at? Because all of  
8 the information I got from you is that the C.F.E. got those  
9 turbines for \$12-million less than they had bargained  
10 Mr. Delgado, which was 120-million. So that would come out to  
11 about 108-million.

12 MR. HERRINGTON: That's exactly --

13 THE COURT: C.F.E. is saying they actually paid  
14 129-million. So we're talking about \$21-million of  
15 discrepancy. That's not in Mr. Gireud letter. Show me where  
16 that's at, please.

17 MR. HERRINGTON: Actually, I can't tell you where the  
18 21 comes from. I can tell you where the 13 comes from.

19 THE COURT: Well --

20 MR. HERRINGTON: There was a lot of things because it  
21 all comes down -- and we'll have a chance to look at this in  
22 restitution.

23 THE COURT: Sure.

24 MR. HERRINGTON: But like most things in this case, it  
25 comes down to a lie from Mr. Delgado. Mr. Delgado told C.F.E.,

1 oh, yeah, don't worry, we've got the transportation taken care  
2 of. Don't worry we've got the deicing taken care of. Those  
3 were lies. And so did C.F.E. have to pay additional monies for  
4 that material and that work that was outside the original  
5 contract with M.P.S.A.? Absolutely, they did. And that's  
6 what's reflected in paragraph eight of Mr. Gireud affidavit.

7 You know, I've heard some extraordinary things this  
8 morning, that this was all sort of two corporate sumos who were  
9 out to knock out the middleman. I think it's pretty  
10 extraordinary.

11 I think it's pretty extraordinary to have counsel sit  
12 here and talk about allegations after a jury has returned a  
13 verdict. These aren't allegations. This was a fraud that this  
14 man was convicted of. And this wasn't a deal gone wrong. This  
15 was a deal -- and you put it very well, Your Honor -- that was  
16 built from the beginning as give it to C.F.E. and short  
17 M.P.S.A. in every step of their way. That's exactly what Mr.  
18 Delgado did.

19 And that's true whether you are talking at the  
20 beginning about that \$32-million that went to the Turks and  
21 Caicos account, only 18 of which was sent to M.P.S.A. It's  
22 also true, and this is where, you know, what happened to  
23 M.P.S.A. just tracks right in the indictment, because when you  
24 read through it and you ask yourself, well, hey, you know,  
25 Count One of the indictment, well that was about the forgery.

1 What was the forgery all about? Well, the forgery was all  
2 about a lie by Mr. Delgado, because Mr. Delgado had said, don't  
3 worry guys, I'll cover the letter of credit. But what did he  
4 do? He did a lie that's in Count One and a lie that's in Count  
5 Three.

6 On the one hand, he, in Count One, forged a letter  
7 from my client, employee. He forged that letter to say, oh,  
8 you know, we're pledging the equipment. We don't need a letter  
9 of credit. And then what did he do in Count Three? He lied to  
10 my client and said, oh, don't worry. We didn't do anything  
11 like forging, like pledging the equipment. We know we -- oh,  
12 we know we couldn't do that. It's lie, after lie, after lie.  
13 It's an insult to the businessmen and women of this country for  
14 someone to stand at this podium and say this is just a normal  
15 course of business. That's a quote. It's not the normal  
16 course of business that my clients conduct. And I don't think  
17 it's the normal course of business that anyone in this country  
18 thinks it's an acceptable course of conduct.

19 You said it best. He got everything from C.F.E. and  
20 he shorted M.P.S.A. Many people signed off on this. You know  
21 who the many people that signed off on this were? Mr. Delgado,  
22 when he signed Mr. Adams name to the forgery; Mr. Delgado when  
23 he lied to M.P.S.A. about how, oh, no. Oh, no, I would never  
24 pledge your equipment. I know you feel like I'm pulling a fast  
25 one on you here, but oh, no.

1           So, the idea that this is some kind of victimless  
2 crime, and boy, you know, the bad guy is federal government  
3 just sort of stepped into the world of business and don't  
4 really understand how things are done, I just find that an  
5 absolutely unacceptable thing be said from this podium, Your  
6 Honor.

7           The submission that we made to the probation office  
8 puts forward exactly the number that we believe that the losses  
9 were here to Mitsubishi, which is \$24,797,772.00.

10           I am not going -- I think my friend drifted into the  
11 restitution issue. I think we'll come back to that and I'll  
12 have another chance to address that. I think those are the  
13 losses that are proximately tied to this indictment that  
14 Mr. Delgado was found guilty of. These aren't allegations.  
15 These were what he was found guilty on.

16           So, you know, I was here. I brought the witnesses  
17 here. We brought the witnesses to El Paso on other occasions  
18 to cooperate in this investigation. We had to file the lawsuit  
19 in Texas to declare -- to get the pledge declared illegal. We  
20 had to go to Mexico and be sued by our customer; not what we  
21 want to have, because we made the poor decision of doing  
22 business with Mr. Delgado. We paid a big price for this, well  
23 beyond the number on that piece of paper. And I'm hear today  
24 just for the same reason that my friend is from C.F.E., to make  
25 sure that justice is done here. And I'm sure that the Court

1 will take that into consideration and I thank you.

2 THE COURT: All right. Thank you.

3 MS. KANOF: That's it.

4 THE COURT: Okay. All right.

5 Well, noting your request for a variance, I think that  
6 the facts of the case and the history of this defendant counts  
7 against that, so I'm going to assess a guideline sentence of  
8 120 months in Counts 11 through 19. And I'm going to vary  
9 slightly from the suggested guideline range for purposes of  
10 Counts One through Ten and assess a sentence of 120 months for  
11 those counts. Those counts will run concurrent.

12 I don't see where there's any money from which  
13 Mr. Delgado is going to pay a fine, and so I'm not sure that a  
14 fine is going to help, so I'm not going to assess a fine in  
15 this case. It's going to be waived.

16 I'm going to follow the term of confinement with  
17 three years of supervised release and be concurrent on all  
18 counts under standard conditions adopted by the Court. These  
19 will include that you commit no crime against the United  
20 States, any state of United States or any local government,  
21 that you abide by the special condition that you submit to  
22 one year of intermittent confinement as directed by the Court  
23 pursuant to law.

24 And Mr. Hanshew, you're familiar with the one count  
25 that's -- requested special condition of supervision that's in



1 paragraph 137 under the new -- the September -- the July 20th,  
2 2017, P.S.I. It's just the one that the defendant shall  
3 provide the probation officer with access to any requested  
4 financial information and authorize the release of any  
5 financial information as directed by the Court.

6 The last line will be deleted.

7 MR. HANSHEW: Okay. Yeah. As long as it's striking  
8 the government.

9 THE COURT: Okay. Any objection to that?

10 MR. HANSHEW: We don't have objections.

11 THE COURT: Okay. Then that will be included as a  
12 condition as well.

13 All right. So, I will also order that the  
14 forfeiture -- the preliminary order of forfeiture in relation  
15 to the defendant's interests in the property that we addressed  
16 earlier is forfeited to the United States, all title, ownership  
17 and interest that the defendant may have in that property. A  
18 special assessment of \$1,900. And I will order restitution and  
19 we'll determine that in the proceeding that we will proceed on  
20 next.

21 I'm going to order that -- this is ten years -- I'm  
22 going to order that five years of this sentence run concurrent  
23 with the sentence previously assessed against Mr. Delgado in  
24 cause number EP:12-CR-2106. So five will run consecutive, five  
25 will run concurrent.

1           And I believe that a sentence then, if there's no  
2 changes on appeal and Mr. Delgado is then serving 21 years,  
3 that is sufficient to address the significant issues that he  
4 was involved in, especially in relation to the other case, but  
5 also in relation to this case. And so that's the Court's order  
6 on sentence.

7           A facility, Mr. Hanshew?

8           MR. HANSHEW: One moment, Judge. I need to -- going  
9 back to the Fifth Circuit's ridiculous rule, I have to object  
10 to all of this --

11          THE COURT: Okay.

12          MR. HANSHEW: So we'd object that the sentence  
13 imposed, both in terms of the length as it relates to each  
14 count as well as to not running it concurrent, is excessive and  
15 not reasonable and is not reasonably related to the factors set  
16 forth in 3553 as based on all of our objections and arguments  
17 made in writing as well as orally today, Judge.

18          THE COURT: Okay. Did you have a suggestion?

19          MR. HANSHEW: If I can one moment, Judge. Thank you.

20          (Counsel and defendant converse sotto voce.)

21          MR. HANSHEW: Judge, one other additional request. We  
22 ask that the supervised release run concurrent with the other  
23 case. And then as far as the designation, we request FCI La  
24 Tuna, Judge.

25          THE COURT: FCI La Tuna is the Court's recommendation.

1 MR. HANSHEW: And also, Judge, the DAPS program as  
2 well.

3 THE COURT: RDAP?

4 MR. HANSHEW: Yes.

5 THE COURT: I'll order that he be screened for  
6 addition and participate in RDAP if found to need it.

7 So, I would order that if -- that the supervised  
8 release portions, those three years, run concurrently as well.  
9 We can address those issues if we need to extend. I suppose we  
10 could do that. What do we have? One, two -- I can't remember  
11 how many years of supervised release I gave him on the other  
12 one.

13 MR. HANSHEW: I apologize, Your Honor.

14 MS. KANOF: Three.

15 THE COURT: Was it three also?

16 MS. KANOF: (Nodding head affirmatively.)

17 THE COURT: Okay. All right.

18 So anything else on the sentencing portion today?

19 MS. ARREOLA: Your Honor, does the sentence also  
20 include the forfeiture of the money judgment in addition?

21 THE COURT: Yes, ma'am. The money judgment -- and  
22 we're going to file an amended version of that to make the  
23 changes we indicated.

24 MS. ARREOLA: Yes, sir.

25 THE COURT: We would also include that, yes, ma'am.

1 Thank you.

2 MR. HANSHEW: And just to be safe, we object to the  
3 money judgment component as well, Judge.

4 THE COURT: Okay. All right. So let's go to  
5 restitution.

6 Is there -- I mean do we have anything for Mr. Gireud?  
7 I saw that he filed something, but it was mostly consequential  
8 things for his medical expenses and...

9 MS. KANOF: I didn't think there was anything that was  
10 specifically covered by the restitution statute.

11 THE COURT: Okay. So that was my feeling, so I'm not  
12 going to award anything there.

13 The one issue I have with C.F.E. is because I -- his  
14 argument saying that the actual money that's there is the  
15 Mexican government's money, that that's their asset, and  
16 therefore they should get it back, and that they've applied  
17 through different governmental agencies.

18 And so what is -- what's the government's position as  
19 to that?

20 MS. KANOF: Well -- you want to go ahead.

21 MS. ARREOLA: Your Honor, I'm not aware of any  
22 promises that have been made regarding what's going to happen  
23 to the assets and certainly I don't believe AUSA Kanof has made  
24 any such promises either.

25 THE COURT: That seems like a different issue. I'm

1 here to assess restitution, kind of like an equitable, and  
2 those seem like hyper-legal issues that should be litigated  
3 somewhere else.

4 MS. ARREOLA: Your Honor, the government agrees, and  
5 there're two separate issues; one, what will happen with the  
6 forfeited assets and restitution. What will happen with the  
7 forfeited assets is to be determined by the Department of  
8 Justice. The money laundering and asset forfeiture -- excuse  
9 me. I think it's -- it's changed it's name recently to MLARS,  
10 Money Laundering and Asset Recovery Section. The Attorney  
11 General has designated his authority to distribute forfeited  
12 assets for purposes of victim restitution to the chief of that  
13 section, which is a component of the Department of Justice.

14 After the Court enters the restitution order in this  
15 case, in the event that any properties are forfeited to the  
16 United States, this office, the U.S. Attorney's Office will  
17 make a request to MLARS to apply for forfeited assets to the  
18 restitution orders, assuming the criteria under the restoration  
19 policy are present, which I believe that they are. But that's  
20 not that's a decision that's made by the U.S. Attorney's  
21 Office. It's made solely by the chief of MLARS.

22 THE COURT: And they'll also decide -- let's say I was  
23 to order restitution to both C.F.E. and Mitsubishi, that office  
24 will then decide how much goes to each if of what they have?

25 MS. ARREOLA: I don't believe so, Your Honor. I

1 believe it's -- I believe that they just send the forfeited  
2 assets to the clerk's office. That's my understanding, and I  
3 apologize if I later on learn something else, but my  
4 understanding at the moment is that they don't -- once the  
5 Court enters the restitution order, the forfeited assets, if  
6 restoration is granted will simply be sent to the clerk's  
7 office for distribution.

8 MS. KANOF: If I may, Your Honor.

9 I think what Mr. Maney is talking about is that the  
10 Office of International Affairs agreed to participate in  
11 seeking justice for C.F.E. We don't ever make any agreement or  
12 agree that specific things or specific funds are funds of the  
13 government or anything like that.

14 But with -- apologies in advance for saying that's not  
15 my department. We have a section in the San Antonio office  
16 called the Financial Litigation Unit. And forfeitures -- what  
17 happens with forfeited properties and forfeited funds is --  
18 Ms. Arreola has explained, goes through one direction, and a  
19 determination is made as to whether or not that can satisfy  
20 restitution.

21 The other thing that happens is when a restitution  
22 order is issued, that restitution order goes to our financial  
23 litigation unit, which is headed by an assistant United States  
24 attorney named Kristy Callahan. And she's an expert in this  
25 field.

1           And there are the U.S. Attorney's manual and the  
2     Department of Justice is replete with regulations that  
3     determine how that money is distributed. And they will --  
4     Kristy Callahan will first of all look to see if Mr. Delgado  
5     has other assets that are -- that Homeland Security -- that  
6     Josh Fry missed. They have an incredible shovel and are pretty  
7     magnificent in finding things that have not been located and do  
8     it in perpetuity until the defendant, in some instances, is  
9     deceased. And they satisfied those restitution orders forever  
10    depending on the statute, and the regulations as to how they  
11    should be satisfied.

12           So the Court's -- my understanding is the Court's only  
13    responsibility is to determine whether or not restitution is  
14    appropriate and how much that restitution would hypothetically  
15    be and that's it.

16           How it's distributed is determined by other  
17    regulations and by our financial litigation counsel.

18           THE COURT: All right. So then let's start with  
19    C.F.E., because from reading everything, it seemed to me like  
20    C.F.E. had these collateral damage issues that are not  
21    necessarily contemplated by restitution.

22           MS. KANOF: That's correct.

23           THE COURT: And so if I'm looking just at the numbers  
24    and I thought before I came here, that the number was  
25    \$120-million for the generators. And then the service contract

1 which then fell through and so we don't need to worry about  
2 that.

3 And then from what I saw from the filings that  
4 Mitsubishi produced and the affidavit from Mr. Beddard?

5 MS. KANOF: Beddard.

6 THE COURT: -- Beddard, he indicates that  
7 Mitsubishi -- that C.F.E. received those very same generators  
8 and a service contract and insulation and the whole ball of  
9 whacks, for less than what C.F.E. had originally contracted  
10 for, so there was actually a savings of \$12-million for C.F.E.,  
11 and so if there was a savings, they lost nothing. They  
12 actually gained \$12-million. And so if that's the case, we  
13 don't have to really spend a lot of time on that.

14 So, that's the first thing we need to clarify, because  
15 counsel indicates that C.F.E. sent a check over to Mitsubishi  
16 for 129-million, and nowhere in any of this written material do  
17 I see that.

18 MS. KANOF: Your Honor, would you like testimony  
19 there?

20 THE COURT: Sure, absolutely.

21 MS. KANOF: From whom?

22 THE COURT: Whoever has firsthand knowledge and  
23 ability to testify to it.

24 MR. HANSHEW: Oh, well, obviously we're going to  
25 object to -- I mean, an attorney for these parties does not



1 have firsthand knowledge, Judge.

2 THE COURT: Well, you know, I misspoke, because I  
3 think hearsay is admissible here, actually. I think hearsay is  
4 admissible in these hearings.

5 MR. HANSHEW: To put on an attorney to testify without  
6 firsthand knowledge of what happened.

7 THE COURT: When the rules say hearsay is admissible,  
8 that's what it means, someone that doesn't have firsthand  
9 knowledge who just heard about it is going to testify. I think  
10 that's the rule.

11 MS. KANOF: Yeah, hearsay is admissible.

12 But Your Honor, could we just have a brief recess so I  
13 can talk to the representatives for the victims.

14 THE COURT: Yeah, you think the three of you could get  
15 together and come up with a number and figure it out?

16 MS. KANOF: Okay.

17 THE COURT: Because those two numbers aren't jiving.  
18 They're far apart. One is 13 and other is like 20 --

19 MR. HANSHEW: Well, the PSR in this case said zero to  
20 C.F.E. and the government didn't object or file anything.

21 THE COURT: Right. And I think that's probably right,  
22 but since we're here for an evidentiary hearing...

23 MS. KANOF: And I did talk to Ms. Torres about it and  
24 she did explain to me that -- I'll tell you what she said. She  
25 said that the victim impact statement from C.F.E. did not ask

1 for money that was consistent with the restitution statute.

2 THE COURT: Right, but that's because there was all of  
3 those collateral damage kind of issues, but I just heard  
4 C.F.E.'s lawyer say they paid \$129-million for the machines --

5 MS. KANOF: Right. That was --

6 THE COURT: -- and they had originally contracted for  
7 120, so they lost \$9-million. That's an actual loss.

8 MS. KANOF: That's what we need to clean up.

9 THE COURT: So let's take, what, 15 minutes?

10 MS. KANOF: That would be great, Your Honor.

11 THE COURTROOM SECURITY OFFICER: All rise.

12 (Break in proceedings.)

13 MS. KANOF: Your Honor, could Mr. Herrington address  
14 you. I think that pursuant to statute they're going to ask for  
15 a little time.

16 THE COURT: All right.

17 Mr. Hanshaw?

18 MR. HANSHEW: Not me. Mr. Herrington.

19 THE COURT: No, I know, but before -- while he walks  
20 up here, do you have any objection to giving him more time.

21 MR. HANSHEW: I don't.

22 THE COURT: Ms. Kanof, do you?

23 MS. KANOF: No, we have no objection, Your Honor.

24 THE COURT: All right. So...

25 MR. HERRINGTON: Your Honor, so you know it's because

1 of this process where we're victims and didn't have the PSR  
2 before today and didn't have each other's statements, I think  
3 it would be more respectful to people's time if you give us  
4 30 days, and we'll come back, and you know we may be in the  
5 same place, but hopefully we can work something out. And then  
6 we'll make a filing and Mr. Hanshew will object, and then we  
7 can decide or you can decide if we need a hearing, but that  
8 seems better today than the two of us arguing about icing  
9 systems.

10 THE COURT: Okay.

11 MR. HERRINGTON: Under 18 U.S.C., 3364(d)(5), as I  
12 understand it, the Court has 90 days --

13 THE COURT: Right.

14 MR. HERRINGTON: -- to make a determination. And so  
15 by having 30 days until we come back, that should leave ample  
16 time for --

17 THE COURT: Plenty of time. And if we have to reset  
18 it again, we can do that.

19 Here's what I am interested in knowing. Obviously, I  
20 need to figure out what happened to Mitsubishi as a result of  
21 this thing. Initially from my reading, it looked like  
22 Mitsubishi sold that equipment -- I am talking just about the  
23 physical equipment --

24 MR. HERRINGTON: Yeah.

25 THE COURT: -- sold it for about half of what the

1 contracted price ways, and so I want to know, did Mitsubishi  
2 know about the original contract for 120-million, and if they  
3 did, why did they sell it at such a discount knowing that  
4 C.F.E. was willing to pay 120-million, because it could been  
5 120-million minus the 32 they already paid, because they paid  
6 32, and that would still come up with \$88-million.

7 MR. HERRINGTON: And we'll be prepared.

8 THE COURT: And so I think you also did like  
9 \$67-million or something like that, just the equipment, not  
10 the --

11 MR. HANSHEW: Yeah.

12 THE COURT: -- service contract.

13 MR. HERRINGTON: And we'll be prepared, Your Honor.

14 THE COURT: And also, in fairness to Mr. Delgado, I  
15 guess we need to factor in whatever profit Mitsubishi is making  
16 off the service contract.

17 MR. HERRINGTON: Well --

18 THE COURT: Because there's a cost to you for that and  
19 there's a profit to you for that.

20 MR. HERRINGTON: So, I'm happy to address that in the  
21 papers, but I think that that's a bit of a detour and let me  
22 say why.

23 These turbines are among the most complicated things  
24 that human beings make. There's no world in which those  
25 turbines were installed and there wasn't a service contract.

1 Now, that service contract might have been gone to Mitsubishi,  
2 it might have gone to somebody else.

3 THE COURT: Originally, it did.

4 MR. HERRINGTON: Right.

5 THE COURT: Originally, the service contract was with  
6 Mitsubishi for 121-million, but then something happened and  
7 they got that other company or competitor.

8 MR. MANEY: That would be Mr. Delgado went to other  
9 people and shopped it over there.

10 MR. HANSHEW: Mr. Gireud did do that, Judge, just to  
11 be clear on the record.

12 THE COURT: Okay. All right.

13 MR. HERRINGTON: So -- I mean, I could argue it's in  
14 the papers. I think it's apples and oranges. That L.T.S.A.  
15 was going to be there either way, and so if there was profit on  
16 the L.T.S.A., that's not, you know, an offset against the  
17 losses on the sale of the turbines.

18 THE COURT: Except in my sense of justice, what we're  
19 looking is how you were put out by his conduct. How you were  
20 financially impacted by his conduct. You definitely were  
21 impacted on the price of the equipment.

22 MR. HERRINGTON: Okay.

23 THE COURT: But you had already backed out of the  
24 contract. So then you got another contract with C.F.E. for the  
25 servicing. I don't know how much of that is actual cost and

1       how much is profit, and I'm not sure how much of the profit  
2       incentive on the service contract caused you to underprice the  
3       equipment when you sold it to C.F.E., because I know C.F.E. was  
4       willing to pay \$120-million for that equipment and you sold it  
5       for a lot less.

6               So, I want to know all of those things.

7               MR. HERRINGTON: Okay.

8               THE COURT: If we're going to look at it, we're going  
9       to look at it, otherwise, we're not going to do it. I mean,  
10      that's how I want to do it.

11              MR. HERRINGTON: And that's -- with me.

12              THE COURT: So you need to show me cost and profit off  
13      of the service contract and the reason for underselling the  
14      equipment.

15              MR. HANSHEW: Your Honor, if I could ask just in terms  
16      of the scheduling on this, suggest possibly instead of a 30-day  
17      a 60-day. At the 30-day mark, the Court could set a deadline  
18      so that they submit their written material that they're going  
19      to and then that gives us a 30-day period to be able to  
20      investigate what it is that they'll be turning in, because it  
21      will be something we've never seen before. That way we don't  
22      have to be, you know, calling and asking for extension here and  
23      there. That gives -- you have 90 days by statute, so 60  
24      doesn't even touch, that way we just all have our appropriate  
25      time to be able to respond.

1 THE COURT: All right. What do you think about that,  
2 Ms. Kanof?

3 MR. HERRINGTON: Sure.

4 MS. KANOF: (No response.)

5 THE COURT: Mr. Herrington?

6 MR. HERRINGTON: No, I think that's right.

7 THE COURT: Okay. So then in 30 days, C.F.E. and  
8 Mitsubishi will submit their paper argument as to what the loss  
9 should be with all of the math details.

10 And then Mr. Hanshew you'll have 30 days to address  
11 that or read that and be familiar with it and then we'll set  
12 the hearing in 60.

13 Where will that put us, Greg?

14 COURTROOM DEPUTY DUENAS: That would put us around the  
15 week of November 27th, Judge.

16 THE COURT: November what?

17 COURTROOM DEPUTY DUENAS: 27th.

18 THE COURT: When is Thanksgiving in relation to that?

19 MS. KANOF: 24th.

20 MR. HERRINGTON: 24th?

21 COURTROOM DEPUTY DUENAS: 23rd.

22 THE COURT: So we're at the following week.

23 Okay. Mr. Herrington, how is your calendar for that  
24 week?

25 MR. HERRINGTON: I could make that work, Your Honor.

1 THE COURT: All right. Can we make that work?

2 UNKNOWN SPEAKER: Yes, sir.

3 THE COURT: Ms. Kanof?

4 MS. KANOF: Other than Monday, I'll be coming back in  
5 to town on that Monday.

6 THE COURT: Okay. Maybe Wednesday then.

7 Mr. Hanshew?

8 MR. HANSHEW: Either of those days are fine, Judge.

9 THE COURT: So let's do it Wednesday. What day is  
10 that?

11 COURTROOM DEPUTY DUENAS: November 29th, Judge.

12 THE COURT: Okay. What is the most convenient day for  
13 you-all to travel?

14 MR. HERRINGTON: May I just check my phone, Your  
15 Honor?

16 THE COURT: Sure.

17 MR. HANSHEW: Judge, I guess just a question the Court  
18 may ask. Are they actually going to bring the witnesses that  
19 were the affiants and the such.

20 THE COURT: I don't know. But I think that hearsay is  
21 admissible and I think they can just do affidavits.

22 MR. HANSHEW: I've never seen in any case a  
23 restitution I've researched that the evidence has been based on  
24 secondhand testimony of attorneys and victims. It always has  
25 the victims.



1 THE COURT: All right. Can you show me a case that  
2 says it cannot be hearsay?

3 MR. HANSHEW: I'll look for that, Your Honor.

4 MS. KANOF: The statute says the attorneys can speak  
5 for the victims.

6 MR. HERRINGTON: And Your Honor, we're going to put  
7 this in by affidavit and I'm not sure there is a right to  
8 cross-examine here. I think you're right. It would be kind of  
9 odd to having attorneys taking the stand. But you know C.F.E.  
10 and M.P.S.A. have already put in affidavits from the technical  
11 people. I think one of the big jobs we have is just to get the  
12 technical people to agree on what these different numbers mean  
13 and what does and doesn't count.

14 THE COURT: Okay. Because the other thing is, I don't  
15 have the original contract. And I don't know how much of the  
16 original contract the \$120-million for the equipment included,  
17 because we want to make sure we're comparing apples to apples.

18 MR. HERRINGTON: Which is a challenge in this case.

19 THE COURT: Right.

20 MR. HERRINGTON: November...

21 THE COURT: 29th, is that good for you?

22 MR. HANSHEW: Judge, like you, we'd ask if they can  
23 bring the entire contract and all of the bids that make up that  
24 contract so that everybody sees what the valuations are.

25 THE COURT: Mr. Maney, the 29th, is that good for you?

1 MR. MANEY: Yes, sir.

2 THE COURT: Okay. Mr. Herrington --

3 MR. HERRINGTON: I do -- I'm sorry. I have a speaking  
4 engagement on the 29th. I could come on the 30 -- no. I could  
5 be here on the 28th.

6 THE COURT: Mr. Maney, 28th?

7 MR. MANEY: Yes.

8 THE COURT: Ms. Kanof, are you here on the 28th?  
9 That's a Tuesday.

10 MS. KANOF: I'll be here Tuesday, yes, Your Honor.

11 THE COURT: Okay.

12 Mr. Hanshew, Tuesday?

13 MR. HANSHEW: That's fine.

14 THE COURT: Okay. So we'll do it on the 28th then.

15 MR. HERRINGTON: And I just have this feeling we're  
16 going to end up having back-and-forth about this. I don't  
17 think we need to turn this into a minitrial on the contracts.

18 THE COURT: It kind of feels like it's going to be  
19 that, doesn't it?

20 MR. HERRINGTON: Yeah. And I'm not --

21 THE COURT: It would be great if you all could just  
22 agree. That would be outstanding.

23 MR. HANSHEW: There're asking for \$25-million into a  
24 billion dollars and they don't want to have a little minitrial.  
25 I mean that's nice, but you have to actually have evidence and

1 the government has the burden of the statute to prove it  
2 with --

3 THE COURT: That's true. And in the end, this is  
4 really an academic exercise. Because unless Mr. Delgado has  
5 this pot of gold hidden away somewhere where we can get our  
6 hands on it...

7 MR. HERRINGTON: It's really not -- understood.

8 THE COURT: Okay.

9 MR. HERRINGTON: Thank you, Your Honor.

10 THE COURT: All right. Thank you all. We'll see you  
11 back in 60 days.

12 (Proceeding concludes.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /S/KATHLEEN A. SUPNET  
Kathleen A. Supnet, CSR

September 7, 2018  
Date

KATHLEEN A. SUPNET, CSR